IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

No. 303.

CHARLES E. POPE, Receiver of the Chicago and South Atlantic Railroad Company, *Appellant,* *vs.* LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, *Appellee.*	Appeal from the Circuit Court of Appeals for the Seventh Circuit.

BRIEF OF APPELLANT IN OPPOSITION TO MOTION of APPELLEE to DISMISS APPEAL.

I.

This appeal lies as of right under Clause 3, Section 6, of the Judiciary Act of March 3, 1891.

That provision is as follows:

> "In all cases not hereinbefore in this section made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States, where the matter in controversy shall exceed one thousand dollars besides costs. But no such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment or decree sought to be reviewed." (26 U. S. Stats., 828. Sec. 6, Cl. 3.)

The cases in which, thereinbefore in that section (viz:

in clause 1 thereof), the judgment or decree of the Circuit Court of Appeals is made final, are these:

1. In all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states; and

2. In all cases arising under the patent laws, under the revenue laws, and under the criminal laws, and in admiralty cases.

It is contended by the appellee, upon this motion to dismiss and in its brief in support thereof, that this is a case in which the jurisdiction is dependent entirely upon the opposite parties to the suit being citizens of different states, within the meaning of clause 1 of section 6, above mentioned. The appellant maintains, on the other hand, that the case in which the judgment or decree in question in this case was rendered is *not* a case in which the jurisdiction is dependent entirely upon the opposite parties thereto being citizens of different states. And that is the question which is involved upon this motion to dismiss.

Is this original bill by the receiver, appointed by Federal courts in other suits, to enforce the right and title acquired by him in and through the Federal courts of his appointment, a suit arising under the Constitution and laws of the United States?

The appellant was appointed receiver of the Chicago & South Atlantic Railroad Company by the Circuit Court of the United States for the Northern District of Illinois, and was thereby directed to take possession of all the real and personal property of said railroad company and all other rights and property whatsoever of said

railroad company within that district, with the usual powers and duties of a receiver. And the order directed that said Chicago & South Atlantic Railroad Company, or whoever might have possession thereof, should assign, transfer and deliver over to such receiver its property, etc. That provision of the order is as follows:

> "And it is further ordered that the defendant, the said Chicago and South Atlantic Railroad Company, or whoever may have possession thereof, do assign, transfer and deliver over to such receiver under the direction of Henry W. Bishop, a master in chancery of this court, all the property, real and personal, wheresoever found in this district, and all contracts for the purchase of land, and all other equitable interests, things in action, and other effects which belonged to or were held in trust for said defendant railroad company, or in which it had any beneficial interest, including the stock books of said railroad company, in the same condition they were at the time of exhibiting the said bill of complaint in this case, except as far as necessarily changed in the proper management of said road, or in which it now has any such interest, and that said defendant, Chicago and South Atlantic Railroad Company, deliver over, in like manner, all books, vouchers, bills, notes and contracts, and other evidences relating thereto, and also the stock books of said railroad company.
>
> "And it is further ordered that the said receiver have full power and authority to inquire after, receive and take possession of all such property, debts, equitable interests, things in action, and other effects, and for that purpose to examine said defendant, its officers and such other persons as he may deem necessary, on oath before said master from time to time."

After the appellant's appointment as receiver as aforesaid, the Circuit Court for the Northern District of Illinois, Judge DRUMMOND presiding, entered its further or-

der in the cause in which appellant was so appointed, giving him express authority to bring suits. That order was entered *nunc pro tunc*, as of the date of his appointment and qualification as receiver, and is as follows:

> "And now comes the receiver, Charles E. Pope, of said Chicago and South Atlantic Railroad Company, and on his application it is ordered and directed that said receiver have full power and authority to bring and prosecute any and all necessary suits for the collection of any claims, choses in action and enforcement of any and every kind and nature, and to defend all suits and actions, touching rights or interests of the property or effects of any kind in his possession or under his control as receiver. This order to be entered now, as of the date of his appointment and qualification as receiver." (Pr. Tr., Vol. II, p. 1,613.)

Shortly after the appellant was appointed receiver, as aforesaid, by the Circuit Court for the Northern District of Illinois, he was also appointed receiver of the Chicago and South Atlantic Railroad Company, by the Circuit Court of the United States for the District of Indiana, and directed to take possession of all real and personal property of the said railroad company, and all other rights and property whatsoever of the said railroad company within that district, with the usual powers and duties of a receiver. And it was further ordered that the defendant railroad company should assign, transfer and deliver over to such receiver all its said property. That provision of the said order is as follows:

> "And it is further ordered that the defendant, the said Chicago and South Atlantic Railroad Company of Illinois and Indiana, or whoever may have possession thereof, do assign, transfer and deliver over to such receiver, under the direction of William P. Fishback, Esq., Master in Chancery of this court, all the property, real and personal, wheresoever

found in this district, and all contracts for the purchase of lands, rights of way, railroad interests, property, railroad franchises, claims for bonds and subscriptions, conveyances thereof or relating thereto, and all other equitable interests, things in action and other effects which belonged to or were held in trust for said defendant railroad company, or in which it had or has any beneficial interest, including the stock books of said railroad company, in the same condition they were in at the time of exhibiting the said bill of complaint in this cause, except as far as necessarily changed in the proper management of said road, or in which it now has any such interest; and that said defendant, Chicago and South Atlantic Railroad Company of Illinois and Indiana, and whoever may have possession thereof, deliver over in like manner all books, vouchers, bills, notes, contracts and other evidences relating thereto, and it is further ordered that the said receiver have full power and authority to enquire after, receive and take possession of all such property, debts, equitable interests, things in action and other effects, for that purpose to examine said defendant, its officers and such other persons as he may deem necessary, on oath before said master, from time to time. It is further ordered and directed that said receiver have full power and authority to bring and prosecute any and all necessary suits for the collection of any claims or choses in action and enforcement of any and all claims and contracts of any and every kind and nature." (Pr. Trans., Vol. I, pp. 340, 18–19.)

The deeds of assignment to the receiver so directed to be made by the said orders appointing appellant receiver, were, after the commencement of this present suit and during its pendency, duly made. (Pr. Rec., Vol. III, pp. 2,279–81.) When so made they related back to and took effect as of the time of the entry of the decretal orders therefor.

Lessee of Wallace v. *Florence*, 1 Wash. R., 503.

Jackson v. *Ramsey*, 3 Cow., 75.
Lundes v. *Brandt*, 10 How., 329, 332.
Welch v. *Dutton*, 79 Ill., 468.
Gibson v. *Choteau*, 13 Wall., 100.

And in the case of an appointment of a receiver in a creditors' suit the equitable title to real interests, as well as the title to personal property and equitable interests passes to the receiver, and in suits in equity by the receiver, no assignment is necessary. The *order* of the court is the effective thing.

Mann, Receiver, v. *Pentz*, 2 Sandf. Ch., 257.
Iddings v. *Bruen*, 4 Sandf. Ch., 417.
Albany City Bank v. *Schermerhorn*, Clarke's R., 298.
Porter v. *Williams*, 5 Seld., 142.
Atty. Gen. v. *Atlas M. L. I. Co.*, 100 N. Y., 282.

The present suit.

After the appointment of the appellant as such receiver as aforesaid by the Circuit Court for the Northern District of Illinois, and by the Circuit Court for the District of Indiana, the appellant, as such receiver, on July 12, 1881, filed this *original bill of complaint* in which the present appeal is pending, in the Circuit Court for the District of Indiana, against persons and corporations who were not parties to or concerned in the suits in which the appellant was so appointed receiver. In this suit, the appellant as such receiver sought to recover, or recover for, certain property and property rights held and claimed by certain of the defendants in this suit, which property and prop-

erty rights, prior to the appellant's appointment as receiver, belonged, as he claimed, to the Chicago and South Atlantic Railroad Company, and *to the ownership of or right to which the appellant receiver succeeded by virtue of his appointment as such receiver, and of the orders of the courts of his appointment, and the proceedings thereunder.* The Chicago and South Atlantic Railroad Company was not made a party to this suit. None of the defendants to this present suit were parties to either of the suits in which the appellant was appointed such receiver. The principal defendants to this present suit were the Indianapolis, Delphi & Chicago Railroad Company, a corporation formed under the laws of the State of Indiana; Morris Sharpe, trustee, who was trustee under a trust deed or mortgage from the Indianapolis, Delphi & Chicago Railroad Company to him; the Chicago & Indianapolis Air Line Railway Company which was formed by the consolidation of a corporation of Indiana and a corporation of Illinois, and the Louisville, New Albany & Chicago Railroad Company, a corporation of the State of Indiana. After this suit was commenced and process served upon said defendants thereto and pending this suit in the Circuit Court, the two defendants, the Chicago & Indianapolis Air Line Railway Company and the Louisville, New Albany & Chicago Railroad Company, entered into articles of consolidation under the name of the Louisville, New Albany & Chicago Railway Company, which is the present appellee, and which was the sole appellant on whose appeal the judgment and decree of the Circuit Court of Appeals here complained of was rendered. None of the issues in this case were involved in or could be determined by the suits in which appellant was appointed receiver.

In his bill of complaint herein, the appellant alleged his appointment as receiver and the orders of court appointing him receiver and authorizing and directing him to bring suit, and his right and title thereby acquired (Pr. Rec., Vol. 1, pp. 1, 2, 23, 24), and that he had given notice of his appointment as receiver to defendants and demanded the property and effects in question, and that said demand was rejected by them. (*Id.*, 42.) And in amendments to the bill, filed by leave of court, and upon which the decree of the Circuit Court proceeded, it was alleged as follows:

> "And the said defendants, or some of them, sometimes pretend that this court, in the said suit of John B. Pettit, never had any jurisdiction of the subject-matter of the said controversy, or of the person of the said Chicago & South Atlantic Railroad Company, to appoint your orator, as receiver as aforesaid, and that your orator as such receiver was never given any power, by the order appointing him, to sue in his own name for the cause of action in this bill set forth; of all which your orator charges the contrary, and charges and submits that the defendants can not, nor can any or either of them herein, aver or raise the question or attack thus collaterally the validity of the order of this court, in the said suit of John B. Pettit, appointing your orator receiver as aforesaid; and your orator charges and submits that said order is, and is to be here taken as valid, binding and effectual; and that your orator is, by the order of said Circuit Court of the United States, for the Northern District of Illinois, and by the order of this court, authorized and empowered, to bring this suit hereunder, in the manner and form as done." (Pr. Rec., Vol. 1, p. 122.)

This amendment, of course, when filed, relates to and is to be taken as if filed at the time of filing the bill. Complainant therefore showed by his bill of complaint that this case involved a federal question—that his right

herein arose and that this is one arising under the federal laws.

(This amendment was not included in the short transcript filed by appellee on this motion.)

This question of appellant's title as receiver, of the validity of his appointment, and of his authority as receiver to bring and maintain this suit, were live questions in this case, the defendants, by their pleadings and motions to dismiss, stoutly controverting them. (Pr. Tr., Vol. I, pp. 76, 68, 263–5.) These were federal questions. The question was involved and fully argued and determined, whether the order of the Federal Court appointing appellant receiver at the suit of a creditor who had not obtained judgment was void collaterally. This involved the seventh amendment to the constitution.

II.

The jurisdiction in this case was not dependent entirely on diverse citizenship within the meaning of clause 1 of section 6 of the judiciary act of March 3, 1891, making the judgment or decree of the Circuit Court of Appeals final in those cases.

There are two recognized and distinct grounds of jurisdiction of federal courts. Section 2 of Article III. of the Constitution, which confers and defines the judicial powers of the United States, and which Chief Justice MARSHALL in *Cohens* v. *Virginia*, 6 Wheat., 264, 398, calls the "distributive clause," lays down and marks this distinction. The cases to which the judicial power of the United States extends are there laid down and distributed as follows:

"All cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

"All cases affecting ambassadors, other public ministers and consuls.

"All cases of admiralty and maritime jurisdiction.

"Controversies between two or more states; between a state and citizen of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

It is plain, and it was held by Mr. Justice STORY, speaking for the court, in *Martin* v. *Hunter's Lessee*, 1 Wheat., 304, 333–4, and by Mr. Chief Justice MARSHALL, in the opinion of the court, in *Cohens* v. *Virginia*, 6 Wheat., 264, 378, that there are here in Section 2 of Article III. of the Constitution, *two classes* of cases enumerated between which a distinction is there drawn; those in the first three above paragraphs forming one class, and those in the remaining two paragraphs forming the other class. In *Martin* v. *Hunter's Lessee*, *supra*, it is stated of this provision of the Constitution:

"It will be observed that there are two classes of cases enumerated in the Constitution, between which a distinction seems to be drawn. The first class includes cases arising under the Constitution, laws, and treaties of the United States; cases affecting ambassadors, other public ministers and consuls, and cases of admiralty and maritime jurisdiction. In this class the expression is, and that the judicial power shall extend to all cases; but in the subsequent part of the clause, which embraces all the other cases of national cognizance, and forms the second class, the word 'all' is dropped seemingly *ex industria*. Here the judicial authority is to extend to controversies (not to all controversies) to which the United States shall be a party, etc."

And Mr. Chief Justice MARSHALL, in *Cohens* v. *Virginia*, 6 Wheat., at page 378, marks the same distinction into these two classes of cases as made by the constitution. He says:

> "The 2d section of the third article of the constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the courts of the union in two classes of cases. In the first their jurisdiction depends on the character of the cause, whoever may be the parties. This class comprehends 'all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.' This clause extends the jurisdiction of the court to all the cases described, without making in its terms any exception whatever, and without any regard to the condition of the party. If there be an exception, it is to be implied against the express words of the article. In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more states, between a state and citizens of another state,' 'and between a state and foreign states, citizens or subjects.' If these be the parties it is entirely unimportant what may be the subject of the controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

The "character of the parties," on which jurisdiction in the second class of cases entirely depends, *do not include receivers, or other officers of federal courts.* The jurisdiction of the Circuit Court of this original bill, by a receiver of a federal court, "depends on the character of the cause"; it is a suit arising under the constitution and laws of the United States.

Now Congress, in framing the judiciary acts, must be held to have in mind and have respect to this constitutional line of distinction.

The words "all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of different states," in clause one, of section 6, of the Judiciary Act of March 3, 1891, must be held to have reference to the above constitutional distinction and classification of the cases of federal jurisdiction. These words are the precise designation of a part of the second class of cases in which the constitution confers judicial powers upon federal courts, and excludes all cases within the first class. That designation excludes all cases arising under the constitution and laws of the United States.

In *Byers* v. *McAuley*, 149 U. S., 608, 618, Mr. Justice BREWER, speaking for the court, said:

> "The jurisdiction of the Federal Courts is a limited one, depending upon either the existence of a federal question or diverse citizenship of the parties."

III.

This suit by the receiver of a federal court is a case arising under the laws of the United States within the meaning of Section 2, of Article III of the constitution, and within the meaning of Clause 1 of Section 6 of the Judiciary Act of March 3, 1891.

The complainant receiver is an *officer of the Federal Court* appointing him. *Stuart* v. *Boulware*, 133 U. S., 78, 81; *Chicago Union Bank* v. *Kansas City Bank*, 136 U. S., 223, 236; *Booth* v. *Clark*, 17 Howard, 322, 331; *Davis* v. *Gray*, 16 Wall., 203, 217–18; *Texas & Pac. Ry.* v. *Cox*, 145 U. S., 393, 601; High, Receivers, Sec.

1. The orders appointing complainant receiver and authorizing him to bring this suit "were entered and all action of the court in the premises taken by virtue of judicial power possessed and exercised under the constitution and laws of the United States." *Texas & Pac. Ry.* v. *Cox*, 145 U. S., 593, 601.

The receiver's title is derived from those orders, and depends thereon.

In *White* v. *Ewing*, 66 Fed. Rep., 2, the Circuit Court of Appeals for the 6th Circuit said:

> "We cannot think, after the decisions of the Supreme Court of the United States in *Railroad Co.* v. *Cox*, 145 U. S., 593, that there is any doubt of the right of the receiver in this cause to bring actions in the Federal Court without regard to the citizenship of the parties thereto, *because his suit, being one maintainable on the authority of an order of the United States Circuit Court, authorizing him to bring it, is one arising under the constitution and laws of the United States*, and is thus manifestly within the jurisdiction of the Circuit Court of the United States, by virtue of the first section of the act of March 3, 1887, as corrected by the act of August 13, 1888 (25 Stat., 433), provided that the amount in controversy exceeds, exclusive of interest and costs, $2,000."

Section 1 of the act of March 3, 1887, as corrected by the act of August 13, 1888, here referred to (which in this respect is like the act of 1875, under which this suit was brought), provides as follows:

> "That the Circuit Courts of the United States shall have original cognizance, concurrent with the courts of the several states, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the constitution or laws of the United

> States, or treaties made, or which shall be made, under their authority, or in which controversy the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different states, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid, or a controversy between citizens of the same state claiming land under grants of different states, or a controversy between citizens of a state and foreign state, citizens or subjects, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid, and shall have exclusive cognizance of all crimes and offenses punishable under the authority of the United States, except as otherwise provided by law, and concurrent jurisdiction with the District Courts of the crimes and offenses punishable by them."

In other words, it was here held, that a suit by a receiver of a federal court was a suit "arising under the constitution and laws of the United States." The Circuit Court of Appeals, however, was in doubt whether the Circuit Court had the power to authorize its receiver, in a general creditor's suit, to sue persons therein for less sums than $2,000, and to enter decrees therefor; and this question was certified to this court and passed upon in *White* v. *Ewing*, 159 U. S., 36, and this court answered the question in the affirmative, and said:

> "But it is insisted * * * that the receiver stands in the shoes of the company, and has no higher rights than the corporation, and having sued for less than the jurisdictional amounts, that as to them the cases must be dismissed.
>
> "This position is entirely correct, so far as the right of the receiver to recover upon the merits is concerned; but it has no bearing whatever upon the question of the jurisdiction of the court to pass upon such merits. The receiver does not take his authority as an ordinary endorsee of the paper, and subject to the disability to sue in the federal court,

> which attaches to such endorsee, *but he takes title by operation of law, and as an instrument of the court which appointed him.* * * * "

That title of the receiver is the basis of this suit here at bar.

The receiver in *White* v. *Ewing* was appointed receiver upon creditors' bill, like that of the case at bar. But Mr. Justice BROWN, delivering the opinion of the court, says upon this question, that "two cases decided by justices of this court are directly in point: *Price* v. *Abbott*, 17 Fed. Rep., 506; *Armstrong* v. *Trautman*, 36 Fed. Rep., 275."

Price, Receiver, v. *Abbott*, 17 Fed. Rep., 506, here ruled to be directly in point, was a suit by the receiver of a national bank. In that case Mr. Justice GRAY held as follows:

> "Being appointed pursuant to an act of Congress to execute duties prescribed by that act, he is, in the execution of those duties, an agent and officer of the United States; and actions brought by him to recover assessments duly laid upon stockholders, and necessary to provide for the payment of the debts of the bank, are suits at common law *brought by an officer of the United States suing under the authority of an act of Congress*, of which this court has concurrent jurisdiction with the district court, without regard to the amount sued for."

And the second case which this court held to be directly in point, of *Armstrong* v. *Trautman*, 36 Fed. Rep., 275, was also a suit by a receiver of a national bank; and Mr. Justice JACKSON said of the question of the jurisdiction of the Circuit Court of such a suit:

> "Prior to the act of March 3, 1887, this was not an open question. It was well settled by several decisions of the Circuit Court, under the act of

> of March 3, 1875, and prior acts, that receivers of national banks, *being officers of the United States, could maintain such actions without regard to the citizenship of the parties or the amount involved in the suit.*"

Now, the complainant receiver herein is as much an officer of the court under and by virtue of the Constitution and laws of the United States as are the receivers of National banks; and this was plainly held by this court in *White* v. *Ewing*, in holding the cases of *Price* v. *Abbott*, and *Armstrong* v. *Trautman*, to be directly in point.

This is further shown by the decision of the court in *Texas and Pacific Railway* v. *Cox*, 145 U. S., 593. In that case the court say:

> "These receivers were appointed by the Circuit Court, and derived their powers and discharged their duties subject to its orders. These orders were entered, and all action of the court in the premises taken by virtue of judicial power possessed and exercised under the Constitution and laws of the United States."

And the court said of the suit there (a suit against the receiver):

> "As jurisdiction without leave is maintainable through the act of Congress, *and as the receivers became such by reason of, and derived their authority from, and operated the road in obedience to, the orders of the Circuit Court in the exercise of its judicial powers*, we hold that jurisdiction existed because the suit was one arising under the constitution and laws of the United States; and this is in harmony with previous decisions. *Buck* v. *Colbath*, 3 Wall., 334; *Feibelman* v. *Packard*, 109 U. S., 421; *Bock* v. *Perkins*, 139 U. S., 628."

Now, here the court squarely holds that the suit against

the receiver (Congress having taken away the requirement that authority therefor from the court should first be had) was one arising under the constitution and laws of the United States *because the receivers became such by reason of, and derived their authority from and operated the road in obedience to, the orders of the Circuit Court in the exercise of its judicial powers.* That is precisely this case. This suit by the receiver is precisely as much a suit arising under the constitution and laws of the United States, on that ground, as a suit against the receiver. We submit that the case of *Texas & Pacific Railway* v. *Cox*, is decisive of this question.

It will be observed that the court in that case (and in other cases cited below) cites as authority the cases of *Buck* v. *Colbath*, 3 Wall., 334; *Feibelman* v. *Packard*, 109 U. S., 421, and *Bock* v. *Perkins*, 139 U. S., 628, (which we shall refer to a little later), and so places receivers of the Federal courts in the same position in respect to jurisdiction as a United States marshal or other court officer.

Again, in the case of *McNulta* v. *Lochridge*, 141 U. S., 327, 330–31, the plaintiff in error, who was a receiver appointed by a Federal court, was sued in a court of the State of Illinois for the negligence of his predecessor in the same office of receiver. He sued out a writ of error from this court to the Supreme Court of Illinois under Section 709 of the Revised Statutes; and the defendant in error made a motion to dismiss on the ground of want of jurisdiction, and of that this court said:

> "We are authorized by Revised Statutes, Sec. 709, to review the final judgment or decree of a state court where 'any title, right, privilege or im-

> munity is claimed under * * * any * * * *authority* exercised under the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed by either party under such * * * authority * * * ' etc. Now, as McNulta was exercising an authority as receiver under an order of the Federal court and claimed immunity as such receiver from suit without previous leave of such court, and the decision was adverse to such claim, he is entitled to a review of such ruling, whether his claim be founded upon the statute or upon principles of general jurisprudence. We regard this as a legitimate deduction from the opinions of this court in *Buck* v. *Colbath*, 3 Wall., 334; *Feibelman* v. *Packard*, 109 U. S., 421; *Pacific R. R. Removal Cases*, 115 U. S., 1; *Etheridge* v. *Sperry*, 130 U. S., 266; and *Bock* v. *Perkins*, 139 U. S., 628. The motion to dismiss must therefore be denied."

Section 709 of the Revised Statutes was passed by Congress in pursuance of that portion of section 2 of article III of the Constitution above referred to, which extends the judicial power of the United States to cases arising under the constitution or laws of the United States and treaties made under their authority, as distinct from cases where the jurisdiction depends upon diverse citizenship.

In *Tennessee* v. *Union & Planters' Bank*, 152 U. S., 454, 459, the court say:

> "The earliest Act of Congress which conferred on the Circuit Courts of the United States general jurisdiction of suits of a civil nature, at common law or in equity, 'arising under the constitution or laws of the United States, or treaties made or which shall be made under their authority,' was the act of March 3, 1875, c. 137 (18 Stat., 470). Under section 1 of that act, providing that those courts should have original cognizance of such suits when the matter in

> dispute exceeded the sum of $500, their jurisdiction was exercised in cases in which the plaintiff's own statement of his cause of action showed that he relied on some right under the constitution or laws of the United States. *Feibelman* v. *Packard*, 109 U. S., 421; *Kansas Pacific Railroad* v. *Atchison, &c., R. R.*, 112 U. S., 414; *New Orleans* v. *Houston*, 119 U. S., 265; *Bacharach* v. *Norton*, 132 U. S., 337; *Cooke* v. *Avery*, 147 U. S., 375."

That is this case which was commenced under the judiciary act of March 3, 1875.

This court in several cases above cited held that a suit by or against a receiver of a federal court, upon this question that it is a suit arising under the constitution and laws of the United States, is governed by the authority of *Buck* v. *Colbath*, 3 Wall., 334; *Feibelman* v. *Packard*, 109 U. S., 421; *Bock* v. *Perkins*, 139 U. S., 628. Let us look at those cases:

In *Buck* v. *Colbath* it is held that a judgment imposed in a state court for trespass against a United States marshal, where he justified under a federal writ of attachment, presented a case for a writ of error under section 709 of the Revised Statutes. In that case the court, by Mr. Justice MILLER, say:

> "The defendant claimed the protection of 'an authority exercised under the United States,' and the decision was against the protection thus claimed; or, in other words, against the validity of that authority, as a protection to him in that action. Whether the authority which he thus set up was valid to protect him is a question for this court to decide finally, and is properly brought before us under the writ of error to the Supreme Court of Minnesota."

In *Feibelman* v. *Packard*, 109 U. S., 421, a suit was brought against a United States marshal on his bond,

for seizing goods under an order in bankruptcy, whi
seizure was alleged to have been wrongful, and the co
held that the suit was one of a civil nature arising un
the constitution and laws of the United States. T
case is parallel, in respect of this question, to the case
bar.

So in *Bock* v. *Perkins*, 129 U. S., 628, it was h
that a suit brought in a state court against a Unit
States Marshal could be removed by the marshal to t
United States Court "as one arising under the laws
the United States."

Clearly, under those cases, this suit is one arising u
der the laws of the United States.

In *Keihl* v. *City of South Bend*, 76 Fed. Rep., 9
in the Circuit Court of Appeals for the Ninth Circuit, t
receiver of a water company, appointed by a fede
court, brought suit against the city to recover money
leged to be due the company for rentals for use of h
drants; and the court held upon the question of jurisd
tion:

> "The subject-matter of the action, involving
> it does the acts and rights of the receiver of a fe
> eral court, constitutes a case arising under the la
> of the United States, and therefore was within t
> jurisdiction of the court below."

In *Jewett* v. *Whitcomb*, 69 Fed. Rep., 417, 418, t
court (SEAMAN, J.) said:

> "The defendants are sued, as receivers appoint
> by a United States court, for the conduct of the
> engaged in the operation of a railroad in the han
> of the court, committed to their charge as its office
> and subject to its exclusive direction and contr
> The liability with which they are charged is o
> arising wholly out of their management of the pro
> erty intrusted to them, and is incurred through th

appointment to and acceptance of the trust. Federal cognizance is conferred by these conditions irrespective of any question of citizenship or of any peculiarity to that jurisdiction, and the right of removal, therefore, follows as of course."

Cooke v. *Avery*, 147 U. S., 375, is conclusive of this question in our favor. In that case, which was an action of trespass to try title to land, it was held that where a plaintiff's title rests upon the validity of a lien claimed to have been acquired under a judgment of a Circuit Court of the United States, the disposition of the issue depends upon the laws of the United States and the rules of its courts, and a federal court has jurisdiction. In that case an action of trespass to try title to land was brought in the Federal Court; and the plaintiff claimed title from a common source with defendants, under an execution sale upon a judgment recovered against the common source in the Circuit Court for the Northern District of Texas; and the court, by Mr. Chief Justice FULLER said:

"Whether a suit is one which arises under the constitution and laws of the United States is determined by the questions involved. If from them it appears that some title, right, privilege or immunity on which the recovery depends will be defeated by one construction of the constitution or a law of the United States or sustained by the opposite construction, then the case is one arising under the constitution or laws of the United States. * * * Plaintiff is to be regarded as the purchaser at the sale, and the validity of his purchase turned upon the existence of a lien, which he asserted and the defendants denied. *The disposition of this issue depended upon the laws of the United States and the rules of the Circuit Court, and their construction and application were directly involved. We are of opinion that jurisdiction as resting on the subject-matter was properly invoked.*" (147 U. S., 384–5, 390.)

So here in this suit, the validity of complainant's title depended upon his appointment as an officer of the Federal Court, under the laws of the United States, and the rules of that court; and their construction and application were directly involved.

By rule 90 of the equity rules which were adopted in 1842, in pursuance of the power conferred by the judiciary act and are therefore of the same effect as an act of Congress, it is provided that in all cases where the rules prescribed by this court or by the Circuit Court do not apply, the practice of the Circuit Court shall be regulated by the "present practice of the High Court of Chancery in England." And it is by virtue of this rule and law as by virtue of the constitution extending the judicial power to cases in equity, and the judiciary acts providing therefor, that receivers are appointed by Federal Courts of equity. The appointment of receivers took its origin in the English Court of Chancery. Upon this Mr. HIGH says:

> "The jurisdiction exercised in the appointment of receivers has always been treated as a purely equitable one, and the remedy has been generally regarded next to that by injunction, as the most efficient and salutary of the extraordinary remedies known to courts of equity. Finding its origin in the English Court of Chancery, it was, until the recent abolition of that court as a distinct tribunal, always regarded as one of its most efficient remedies, although granted with caution and only upon a satisfactory showing of the necessity for the interposition of the court." High on Receivers, Sec. 40.

So the right and title of this receiver and his cause of action, and the disposition of the issue herein, depend upon the laws of the United States and the rules of the court, as clearly as did the title of the complainant in *Cooke* v. *Avery*, *supra*.

In this case, as in *Cooke* v. *Avery*, the plaintiff's title rests upon the validity of the decretal order of the Circuit Court of the United States; and the bill here shows, as in *Cooke* v. *Avery*, that this was denied by the defendants; and here, as there, held, the disposition of the issue depends upon the laws of the United States and the rules of its courts, and the Federal court had jurisdiction on the ground that the case was one arising under the laws of the United States.

In *Morgan's Co.* v. *Texas Central Ry.*, 137 U. S., 171, 201, it was contended that the bill of complaint of the Farmer's Loan and Trust Company to foreclose its mortgage upon property of which the court had appointed a receiver, if treated as an original bill, could not be maintained, for want of jurisdiction—there not being the requisite diversity of citizenship. But the court held that *if that bill be regarded as an original bill, the jurisdiction of the Circuit Court did not depend upon the citizenship of the parties, but on the subject-matter of the litigation.* And as said in *Martin* v. *Hunter's Lessee*, and in *Cohens* v. *Virginia*, *supra*, jurisdiction dependent upon the subject-matter is based upon the first class of cases—those involving a federal question.

There is nothing in the point made by appellee's counsel that appellant in his bill alleged diverse citizenship. He also alleged that his title and case arose under Federal law.

In *Benjamin* v. *New Orleans*, 169 U. S., 161, 164, the court said that the sixth section of the Judiciary Act of March 3, 1891, which makes final the judgments or decrees of the Circuit Courts of Appeals in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and

citizens of the United States or citizens of different states, "refers to cases where no other distinct ground or jurisdiction is relied on." And in *Colorado Mining Co.* v. *Turck*, 150 U. S., 138–144, it was recognized that jurisdiction might be invoked on the ground of a Federal question, although the diverse citizenship were shown. So that here it is of no consequence if the complainant alleged and relied on diverse citizenship, if he also set up the jurisdiction upon another ground. Under section 6 of the Judiciary Act of March 3, 1891, the jurisdiction must depend *entirely* upon diverse citizenship. But jurisdiction here depends upon a Federal question.

IV.

The authorities cited by the appelleee in support of its motion to dismiss considered.

The case of *Carey* v. *Houston & Texas Railway*, 161 U. S., 115, is the only case that bears any resemblance to the case at bar; but that case is readily distinguishable. In that case certain persons as stockholders of the railway company filed a bill in the Circuit Court for the Eastern District of Texas against the railway company to impeach and vacate a certain decree of the Circuit Court entered in a certain consolidated foreclosure suit against the said railway company, of which the complainants were stockholders, *on the ground that the decree was entered through collusion and fraud.* There was no right, title or interest claimed by the complainants under or by virtue of any law of the United States. There was no federal question involved. The court found that there was no collusion or fraud. The complainant in the case attempted, by this indirect method

of filing a bill, to impeach the decree, and then appealing the same from the Circuit Court of Appeals to this court, to obtain a review by this court of questions which were foreclosed from such a review. In the first place, Carey appealed from the decree dismissing his bill of complaint, directly to this court, and sought therein to review the question of the jurisdiction of the Circuit Court in the original case in which the decree of foreclosure was entered. Upon very clear principles, that could only be done by an appeal from the decree in the foreclosure suit; and this court so held in *Carey* v. *Houston & Texas Railway*, 150 U. S., 170. Then Carey having taken a second appeal to the Circuit Court of Appeals from the decree dismissing his bill, where said decree was affirmed, prayed an appeal from the judgment of the Circuit Court of Appeals to this court. But plainly, here, too, the purpose of the appeal was, by this indirect method, to review in this court the decree in the foreclosure suit, which could not be reviewed in this court by any direct appeal. The gist of the decision of this court is contained in these words of the opinion, which are quoted from the opinion of the court in *Gregory* v. *Van Ee*, 160 U. S., 643, 646:

> "Manifestly the decree in the main suit cannot be revised through an appeal on ancillary or supplemental proceedings, thus accomplishing indirectly what could not be done directly."

As stated in the opinion of this court, the ground of jurisdiction of the Circuit Court to entertain a bill to set aside its own decree on the ground of fraud and collusion, was not a ground of federal jurisdiction, but of the exercise of the powers of courts of superior general jurisdiction.

That case is entirely unlike this case. Here the officer of a federal court, claiming title by virtue of his office under the laws of the United States and the rules of the court, files a bill in his own name as such officer, setting up this title and right and seeking to enforce it; and in his bill he alleges that the defendant denies his right and title as such officer and his right to maintain such suit. This case is, as we have stated, like the case of *Cooke* v. *Avery*, 147 U. S., 375, where the jurisdiction was sustained on the ground that a federal question did exist, and that the disposition of the issue as to the plaintiff's title depended upon the laws of the United States and the rules of its courts.

The case of *Gregory* v. *Van Ee*, 160 U. S., 643, was the case of an *intervention* in the same suit in which a decree of the Circuit Court of Appeals was made final by the sixth section of the judiciary act of March 3, 1891. The case of *Rouse* v. *Letcher* was another similar case of intervention; and in those cases it was held that as the decree of the Circuit Court of Appeals in the case is final, the decree upon an intervention in the same suit must be regarded as equally final "because the intervention is entertained in virtue of jurisdiction in the Circuit Court already subsisting." But the jurisdiction of the bill of the receiver in the case at bar was not "entertained in virtue of jurisdiction in the Circuit Court already subsisting" in the sense in which this language is used in the cases cited. Here the orders of the Circuit Court, in the case in which the receiver is appointed, are referred to merely as muniments of the title and right of the complainant receiver, as was the judgment of the Federal Court in *Cooke* v. *Avery*, 147 U. S., 375. It shows that the complain-

ant receiver was appointed an officer of the court. When appointed, he is as much an officer of the court as the clerk of the court or the marshal,and the order of his appointment is his muniment of title. It is settled that an attack in this case upon the validity of the orders appointing appellee receiver is a collateral attack. *Evers* v. *Watson*, 156 U. S., 533; *Cutler* v. *Huston*, 158 U. S., 428, 430; *Compton* v. *Jessup* (Cir. Ct. App., 6th Cir.), 68 Fed. Rep., 263, 282. The cases in which those orders were entered are not this case. The jurisdiction in those cases depends upon one ground; the jurisdiction in the case at bar on entirely separate grounds.

It is not because of the *jurisdiction* of the court in those cases that the jurisdiction here exists. Jurisdiction here exists because an officer of the court claims title under, and basing his right upon the laws of the United States and the rules of the Federal Court. *Cooke* v. *Avery* applies, but not the intervention cases cited by appellee.

The case of *Pacific Railroad* v. *Missouri Pacific Ry.*, 111 U. S., 505, 522, cited by counsel for appellee, has no application. That suit was a bill filed to impeach a decree of foreclosure for fraud, like the bill of Carey in *Carey* v. *Houston & Texas Ry.*, and the question was whether the Circuit Court which entered the decree which was attacked had jurisdiction of the case without regard to the citizenship of the parties. And the court held that:

> " there can be no doubt that the Circuit Court, as the court which made the Ketcham decree, * * * has jurisdiction to entertain the present suit to set aside that decree on the grounds alleged in the bill, if they shall be established as facts, and if there shall be no valid defense to the suit, although the

> plaintiff and some of the defendants are citizens of Missouri."

That case has no sort of application to the case of an original bill of complaint filed by a receiver of a federal court.

The case of *Borgmeyer* v. *Idler*, 159 U. S., 408, cited by the counsel for appellee, is also clearly distinguishable. In that case the court held that when the jurisdiction of a Circuit Court of the United States is invoked upon the ground that determination of the suit depends upon some question of a Federal nature, it must appear, at the outset, from the pleadings, that the suit is one of that character of which the Circuit Court could properly take cognizance at the time its jurisdiction was invoked. In the case at bar that does appear, at the outset, from the pleadings. The fact that the right and title of the complainant was that of an officer of the court derived under the laws of the United States, appeared upon the face and at the beginning of the bill of complaint herein as we have shown. (Print. Rec., pp. 1, 23, 24.)

In the case of *Press Publishing Co.* v. *Monroe*, 164 U. S., 105, cited by appellee, the court said:

> "The plaintiff, in her complaint, did not claim any right under the constitution and laws of the United States, or in any way mention or refer to that constitution or those laws; and, at the trial, she relied wholly upon a right given by the common law, and maintained her action upon such a right only. It was the defendant, and not the plaintiff, who invoked the constitution and laws of the United States."

And for this reason the court very properly held that the case was not one "arising under the constitution or laws of the United States." The case must arise upon

the complainant's case and not upon the defendant's. That case does not apply.

The contention of appellee's counsel that the receiver here recovers in the right of his corporation is incorrect.

This receiver, appointed at the suit of creditors, takes not merely title of the corporation of which he is receiver. He may recover, where the corporation itself, if it had sued, might be barred. He takes an independent and different title. *Pittsburgh Carbon Co.* v. *McMillan*, 119 N. Y., 46; *Curtis* v. *Leavitt*, 15 N. Y., 9, 108; *Porter* v. *Williams*, 9 N. Y., 142; *Gillet* v. *Moody*, 3 N. Y., 479; Beach, Receivers, Sec. 671; *White* v. *Ewing*, *supra*.

But the receiver acquires his appointment and his right and title under and by virtue of his appointment and the laws of the United States and the rules of the Federal Court.

V.

The contentions of the counsel for appellee that no federal question was involved upon the bill in this case; and that the appellant asserted no right under the constitution and laws of the United States, are incorrect.

By the very assertion of the bill that the complainant was appointed receiver, and was an officer of the federal court, and that the courts of his appointment authorized and directed him to bring suit as such receiver and officer, was an assertion of a right under the laws of the United States. These were set up in the bill as first filed (Print. Rec., 1, 2, 3), and again in the amended

bill (*id.*, 23-24), and the complainant alleged that he had given due notice of his appointment as receiver to said defendants, and had demanded that they should deliver and return to him the property and effects of the Chicago & South Atlantic Railroad Company, but said demand was rejected, and that they still hold said property without right. (*Id.*, 42.) And by the further amendment to said bill, as we have shown, it is alleged that the defendants contended that complainant as such receiver was never given any power, by the order appointing him, to sue in his own name for the cause of action set forth in the bill; of which the complainant charged the contrary, and the complainant charged that the order was and was to be taken as valid, binding and effectual, and that the complainant was authorized by the order of the court to bring the suit herein in manner and form as done. (*Id.*, 122.) And these amendments are to be taken when filed, as if filed at the beginning of the suit.

VI.

The ground of the jurisdiction of this suit by the Receiver is not the ground of jurisdiction of the suits in which the Receiver was appointed.

This position is not controverted by saying that if the court appointing the receiver had no jurisdiction or power to appoint him, then this suit by the receiver could not be maintained. That merely means that he is not a receiver of a Federal Court. It would merely mean that his appointment is void. It would merely mean that his muniment of title was not a valid one. So in the case of *Cooke* v. *Avery*, 147 U. S., 375, if the Federal

Court in which the judgment was entered, through the lien of which the plaintiff's title was deraigned, had no jurisdiction to enter said judgment, then there would have been no lien; and that muniment of the plaintiff's title would have been invalid. But the jurisdiction of the Federal Court in *Cooke* v. *Avery*, on the ground that a federal question was involved, did not depend upon, was not the same as the jurisdiction of the Federal Court in the case in which the said judgment was entered. This case is in that respect similar to *Cooke* v. *Avery*.

It does not answer this point for appellee's counsel to assert that the jurisdiction in this suit by the receiver is "ancillary." The word "ancillary" is a word of very wide and varied meaning. It does not necessarily mean that the jurisdiction of the court in an ancillary suit is identical with or the same as the jurisdiction of the suit to which it is ancillary in the sense contended by appellee. It *includes* such cases in which the jurisdiction is the same. Interventions like *Gregory* v. *Van Ee* and *Rouse* v. *Letcher*, and suits to impeach the decree of the same court in which the suit is brought, are such suits. The word "ancillary" is applied to proceedings where the jurisdiction is not the same. For instance, where administration of assets is granted in a state or country other than that in which the deceased person was domiciled, after the granting of letters in the state of his domicile, such second administration is an ancillary administration. But the jurisdiction of the court in the latter case depends upon the laws of that state or country, and not upon the laws of the state or country in which the original administration was had. (See Standard Dictionary, title "ancillary.") So the case of *Cooke* v. *Avery*

was ancillary to the suit in which the judgment was entered, through the lien of which the plaintiff claimed title.

NOTE: Counsel for appellee has printed what purports to be the "pleadings, decree, opinion of Court of Appeals, etc., for use on motion to dismiss appeal, with page reference to certified transcript on file in this court." This short transcript does not contain all of the pleadings. It omits amendments to the bill filed by leave of court. (Pr. Tr., 118–31.) It omits the pleadings on behalf of defendants. It omits the master's report, which contains the findings of fact as approved and confirmed by the final decree. The appellant, however, heretofore filed in this court fifteen copies of the printed transcript of record as filed in the Circuit Court of Appeals, together with printed copies of the supplemental record of proceedings in the Circuit Court of Appeals, of which copies nine copies of each for the use of the justices are still with the court, and we assume are available for the purposes of this motion. We have, therefore, in this brief, referred to the pages of the printed record as printed for the Circuit Court of Appeals. And we have inserted in this brief therefrom certain portions of said record which were omitted from the short transcript filed by appellee, when we deemed these portions essential or important on this motion. And if it is deemed more convenient for the court that all the portions of the record which are thought by counsel to be important on this motion should be included in the short transcript, counsel for appellant will confer with counsel for appellee, and the counsel will speedily supply the same.

Respectfully submitted.

JOHN S. MILLER,
For Appellant.

No. 303.
Bf. of Blodgett & Kretzinger
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JAMES H. MCKENNEY
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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

Filed Jan 20, 1899.

No. 303.

CHARLES E. POPE, RECEIVER OF CHICAGO & SOUTH ATLANTIC RAILROAD COMPANY, *Appellant,*

vs.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, *Appellee.*

Appeal from the Circuit Court of Appeals for the Seventh Circuit.

NOTICE, MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF.

HENRY W. BLODGETT,
G. W. KRETZINGER,
E. C. FIELD,
FOR APPELLEE.

Barnum & Wilson Printing Company, Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

No. 303.

CHARLES E. POPE, Receiver, *Appellant,*
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY, *Appellee.*

Appeal from the Circuit Court of Appeals for the Seventh Circuit.

Motion to Dismiss the Appeal for want of Jurisdiction.

And now comes the appellee and moves this court to dismiss the appeal in this cause upon the ground that the decree of the Circuit Court of Appeals is final, and no appeal lies to this court.

STATEMENT.

This appeal was taken by appellant from a judgment of the Circuit Court of Appeals for the Seventh Circuit, reversing a decree rendered by the Circuit Court for the district of Indiana, against appellee, which appeal appellee moves this court to dismiss for the reasons:

1. That appellant brought this suit as receiver, and

the suits in which he was appointed receiver depended exclusively for federal jurisdiction upon diversity of citizenship of the parties thereto.

2. That appellant's suit depends for federal jurisdiction, either upon diversity of citizenship, alleged in his amended bill of complaint, or upon the ground that his suit is ancillary to the suits in which he was appointed receiver; and that the suits on which he was so appointed did exclusively depend for federal jurisdiction upon diversity of citizenship; and in either case the judgment of the United States Circuit Court of Appeals is final, for which no appeal to this court is provided in the United States Circuit Court of Appeals act.

3. This case involves no federal question, and presents no question arising under the constitution or laws of the United States.

On February 1, 1898, appellee filed in this court the record in this case taken from the Circuit Court of Appeals, together with its petition for *certiorari*, which record was afterwards, by stipulation, and order thereon, filed in this case.

This record is voluminous, and appears printed in four volumes.

To aid this court to more easily examine that part of the record pertinent to this motion, we submit herewith a short record taken from the transcript on file in this court, containing, appellant's amended bill, upon which the case was tried, the Pettit bills upon which appellant was appointed receiver of the Atlantic Company, decree of the Circuit Court, the opinion of the court of Appeals, etc.

AS TO AVERMENTS OF JURISDICTIONAL FACTS IN APPELLANT'S AMENDED BILL, UPON WHICH THIS CASE WAS TRIED.

1. "Your orator, Charles E. Pope, who is receiver of the Chicago & South Atlantic Railroad Company, and who is a citizen of the State of Illinois, brings this his amended bill of complaint—leave therefor having been granted by this court," etc. (See Short Rec., p. 3.)

Then follows the names of the parties defendant, with the averments that they are severally citizens of the States of Indiana, Ohio, New York and Kentucky.

2. And further avers that on December 31, 1880, he was appointed receiver of the Atlantic Company "in a certain suit in equity then pending in the Circuit Court of the United States for the Northern District of Illinois, wherein John B. Pettit and others were plaintiffs, and the Chicago & South Atlantic Railroad Company was defendant." (Short Rec., p. 3.)

That afterwards, in a certain suit in equity then pending in the Circuit Court of the United States for the District of Indiana, wherein John B. Pettit was plaintiff and the Chicago and South Atlantic Railroad Company was defendant, he was appointed receiver of the Atlantic Company, and that he is still acting as receiver under these appointments. (See amended bill, appellee's short Rec., page 3.)

3. Appellant further averred that he was authorized by express order of both courts appointing him receiver, "to bring all suits necessary and proper to be brought, to recover possession of said estate, and effects, and to enforce all claims," etc. (See amended bill, short Rec., p. 4.)

No federal question or questions arising under the constitution or laws of the United States were averred, or appear in appellant's amended bill.

THE SUITS IN WHICH APPELLANT WAS APPOINTED RECEIVER EXCLUSIVELY DEPENDED FOR FEDERAL JURISDICTION UPON DIVERSITY OF CITIZENSHIP.

The first suit was brought in the Circuit Court for the Northern District of Illinois, by Ball and Pettit, the bill alleging that Ball was a citizen of Indiana, and that Pettit was a citizen of Wisconsin, and that the defendants were citizens of Indiana and Illinois.

Thereafter, on proper motion and order thereon, the suit was discontinued as to Ball, leaving Pettit, a citizen of Wisconsin, *sole* plaintiff, and all the defendants citizens of Indiana and Illinois.

Upon the bill in this suit, the Circuit Court of the United States for the Northern District of Illinois, appointed appellant receiver of the Atlantic Company of Illinois. (See Illinois Pettit bill, short Rec., page 35.)

In the bill filed by Pettit in the Indiana Federal Court, he was the sole plaintiff, and averred that he was a citizen of the State of Wisconsin, and the defendant, "the said Chicago and South Atlantic Railroad Company, a corporation organized under the laws of the State of Indiana and Illinois, by consolidation with an Illinois corporation of the same name as defendant herein, and an Indiana corporation known as the Chicago and South Atlantic Railroad Company of Indiana." (See Indiana Pettit bill, short Rec., page 43.)

Pettit averred in his Indiana bill that appellant had theretofore been appointed receiver of the Illinois

Atlantic by the Illinois federal court in his suit there brought.

Both Pettit bills showed upon their face that plaintiffs were floating creditors, without judgment, and that their pleadings are in the nature of creditors' bills, praying for a money decree on drafts and notes.

It was further alleged in the Illinois Pettit bill that the Air Line and Dyer Companies, and divers other corporations, had in their possession or under their control, "tracks and roads" belonging to the Atlantic Company, and was indebted to it in "divers and large sums of money" The Indiana Pettit bill substantially repeats the averments of the Illinois Pettit bill.

No federal question or questions arising under the constitution or the laws of the United States were averred or presented by these Pettit bills. All corporate parties to these suits were incorporated under state laws.

Brief Reference to the Proceedings.

As stated, the case was heard on the amended bill, and a money decree was rendered by the Circuit Court in favor of appellant, as receiver, against appellee, for over $300,000, and appellee was adjudged by the final decree to pay the same. (See final decree, short record, page 50.)

On appeal from this decree, appellant moved the Circuit Court of Appeals to dismiss the appeal for want of jurisdiction; that such motion was overruled. (See opinion Circuit Court of Appeals on this motion, short record, page 54.)

On final hearing, the decree of the Circuit Court was reversed by the Circuit Court of Appeals, with instruc-

tions to dismiss the amended bill. The opinion of the Circuit Court of Appeals was filed June 12, 1897. This opinion recites the contracts exhibited with the amended bill, finds the undisputed facts of record and the conduct of the parties under the contracts, to which we refer for a full statement of the entire case upon the merits, if this court shall desire to consider the same in the course of the determination of this motion. (See findings of fact by Court of Appeals, short record, page 66,) and (Opinion Court of Appeals, short record, page 74.)

July 12, 1897, petition was filed in the Circuit Court of Appeals for a rehearing. November 27, 1897, this petition was overruled. (See short Rec., 85.)

On February 21, 1898, appellant filed the record in this court, with his petition and motion thereon, and brief in support of his application for *certiorari*. Upon consideration thereof, and on March 7, 1898, this court denied appellant's petition for *certiorari*.

Thereafter, and on the 23d day of March, 1898, appellant moved the Circuit Court of Appeals for leave to file a second petition for rehearing, and an elaborate brief in support thereof, which petition and argument were submitted to the court with such motion; that thereafter said motion was overruled. (See Short Rec., 85.)

That thereafter, and on the 18th day of April, 1898, appellant filed his petition in the Circuit Court of Appeals, praying an appeal to this court, which prayer was granted. (See Short Rec., 86.)

Appellant averred in his petition for appeal, to wit:

"That he is advised that this cause is not one in which the jurisdiction is dependent entirely upon the op-

posite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states, nor one arising under the patent laws, or under the revenue laws, or under the criminal laws, nor an admiralty case, and that this is a case which is not made final in this Honorable Court by the Act of Congress of March 3, 1891," etc.

That the Circuit Court of Appeals, in its opinion upon appellant's petition to allow an appeal to this court, said:

> "We entertain grave doubts whether an appeal as of right will lie to the Supreme Court from the judgment of this court. This is a question, however, properly to be decided by the Supreme Court," etc. (See Short Rec., 87.)

HENRY W. BLODGETT,
G. W. KRETZINGER,
E. C. FIELD,
For Appellee.

NOTE:—The transcript of the record is on file, but has not been printed. It covers over 3,000 printed pages. Therefore the consideration and disposition of this motion before hearing may save much expense, labor of counsel and of this court.

Points and Authorities.

I.

Upon the short record here submitted we contend:

(1.) That appellant's suit as receiver is ancillary to the Pettit suits, and the ground of federal jurisdiction in appellant's case must be determined by the jurisdictional facts alleged in the original—the Pettit suits. Inasmuch, therefore, as the only ground of federal jurisdiction alleged in the Pettit bills was the diversity of citizenship of the parties; that must constitute the sole ground for federal jurisdiction in the ancillary bill or suit of appellant.

(2.) If appellant's suit was an original one, then it must depend for federal jurisdiction upon diversity of citizenship as therein alleged, (no federal question being involved) and *in either case* the judgment of the Circuit Court of Appeals is final, from which no appeal would lie to this court.

As shown, the Pettit bills were in the nature of creditors' suits, alleging an indebtedness due from the Atlantic Company to plaintiffs on drafts and notes; that the Atlantic Company was insolvent; that the Air Line Company and other corporations had in their possession assets, tracks, etc., belonging to the Atlantic Company, prayed for the appointment of a receiver, for marshaling assets, winding up the Atlantic Company, and the application by the court through the receiver, of the assets of the Atlantic Company to the payment of its debts.

Appellant brings this suit as receiver appointed in the Pettit suits, and by leave or under order of the court appointing him.

Appellant, in his bill rests his right to recover upon the alleged seizure by the Delphi of certain rights of way, and grading done thereon by the Atlantic Company under two certain contracts, (see contracts in opinion Court of Appeals, in short record here submitted) and that such seizure and appropriation by the Delphi, were fraudulently and forcibly made; that appellee acquired title thereto, and possession thereof, through its consolidation with the Air Line Company, aud that the Air Line Company acquired title thereto, and possession thereof through a foreclosure of Delphi mortgage.

> The statement of these grounds for recovery is only material for the the purpose of showing that the plaintiff's right to recover does not arise under the constitution or laws of the United States.

First, THAT THIS SUIT IS ANCILLARY TO THE PETTIT SUITS.

In *White* v. *Ewing*, 159 U. S., 36, a creditor's bill was brought by Bosworth, a citizen of Massachusetts, against a Tennessee corporation. Ewing was appointed receiver. Thereafter by leave of court the receiver brought suit against a large number of persons as makers of notes to the insolvent corporation of which he was appointed receiver.

This court held

That the Circuit Court obtained jurisdiction over the insolvent corporation, its property and its assets "by the filing of the original creditors' bill by Bosworth, a citizen of Massachusetts, and by the appointment of a receiver, and any suit by or against such receiver in the course of the winding up of such corporation, whether for the collection of its assets or for defense of its property rights, must be regarded as ancillary to the main

suit, and as cognizable in the Circuit Court regardless either of the citizenship of the parties or the amount in controversy."

In support of this rule this court cited:

Freeman v. *Howe*, 24 How., 450.
Krippendorf v. *Hyde*, 110 U. S., 276.
Dewey v. *Coal Co.*, 123 U. S., 329.
In re Tyler, 149 U. S., 164.
Root v. *Woolworth*, 150 U. S., 401.
Rouse v. *Letcher*, 156 U. S., 47.

This court further held:

> "In this case, however, the court proceeds upon its own authority to collect the assets of an estate, with the administration, of which it is charged; and, if the receiver in such cases appears as a party to the suit, it is only because he represents the court in it inherent power to wind up the estate of an insolvent corporation, *over which it has by an original bill obtained jurisdiction.* * * * There is just as much reason for questioning the jurisdiction of the court in this case upon the ground of the want of diverse citizenship, as upon the ground that the requisite amount is not involved."

In *Davis* v. *Gray*, 16 Wall., 215, the question of jurisdiction as to both plaintiff and defendant was urged. The court said:

> "The complainant was appointed to his office of receiver in the suit in equity in *Forbes* v. *The Memphis, El Paso & Pacific Railroad Company*, a corporation created by the State of Texas. The suit was in the same court whence this appeal was taken."

Later, Gray as receiver, brought suit in the same court in which he was appointed receiver, to restrain interference with his possession and control of certain prop-

erty, and the sale of such property by the defendants. Held:

> "He is not appointed for the benefit of either of the parties, but of all concerned. Money or property in his hands is *in custodia legis*. He has only such power and authority as are given him by the court, and must not exceed the prescribed limits.
>
> "Here the property in question is not in the possession of the defendants. * * * But the order of the court expressly requires the receiver to secure and protect 'the assets, franchises and rights' and 'the land grant and reservation of said company.' * * * This bill is *auxiliary* to the original suit. It is analogous to a petition by a receiver to the court to protect his possession from disturbance, or the property in his charge from threatened injury or destruction."

Carey v. *Ry. Co.*, 161 U. S., 115, is decisive of this motion. In that case motion to dismiss the appeal was sustained on the ground that the suit was ancillary, and the jurisdiction it invoked depended upon *the* diverse citizenship which gave jurisdiction to the federal court in the original suit.

To the same effect see *Gregory* v. *Van Ee*, 160 U. S., 643; and *Rouse* v. *Letcher*, 156 U. S., 48.

In *Gregory* v. *Van Ee*, *supra*, on motion to dismiss the appeal from the Court of Appeals, this court said:

> "Therefore, that, if the decree in the main suit were final, decrees in accessory and subordinate proceedings would also be final, and appeals therefrom could not be sustained."

Thus, if decrees had been rendered in the Pettit suits, it is clear that the judgment of the Court of Appeals on appeal therefrom would be final, therefore the judgment in appellant's suit by the Court of Appeals must be equally final, because the latter is ancillary to the former.

It is the inflexible rule in such cases, *namely*, that federal jurisdiction obtained in the original suit and the grounds therefor are extended to the ancillary suit without reference to the citizenship of the parties or the subject-matter of the controversy appearing in such ancillary suit.

In *Ry. Co.* v. *Ry. Co.*, 111 U. S., 522, this court, in speaking of an ancillary suit, said:

> "The bill, though an original bill in the chancery sense of the word, is a continuation of the former suit on the question of the jurisdiction of the Circuit Court. *Minn. Co.* v. *St. Paul Co.*, 2 Wall., 609."

If this suit of appellant was an original and not an ancillary one, then it must exclusively depend for federal jurisdiction upon diversity of citizenship, because:

(*a.*) No federal question is presented.

(*b.*) No right, privilege or immunity is claimed or asserted by appellant in his amended bill, nor does the same appear of record which arises under the constitution and laws of the United States.

In *Borgmeyer* v. *Idler*, 159 U. S., 413, it is held:

> "And in order to maintain that the decision of the Circuit Court of Appeals was not final, it must appear that the jurisdiction of the Circuit Court was not dependent entirely upon the opposite parties being citizens of different states."

As repeatedly held by this court, this jurisdiction must affirmatively appear from appellant's pleadings, and it can only so affirmatively appear to depend upon other grounds than diverse citizenship from averments showing that appellant's cause of action arose under the constitution, laws or treaties of the United States, *and no such averments appear in the pleadings or record.*

In *Bergmeyer* v. *Idler*, *supra*, this court said:

> "But it was not suggested in the summons and statement of claim that the validity or construction of any treaty made under the authority of the United States was drawn in question, and no such question was decided either by the Circuit Court or the Circuit Court of Appeals."

Here no federal question was averred in appellant's amended bill, and none was intimated or decided by the Circuit Court or the Court of Appeals, as affirmatively appears from the decree of the Circuit Court and the opinion of the Court of Appeals, here submitted.

In *Smith* v. *Rockliffe*, 87 Fed., 964, held:

> "The receiver stands upon the footing of the corporation itself. If the corporation had the right to sue the State of California the receiver has undoubtedly succeeded to the right. It is only where the jurisdiction of the United States courts depends upon diverse citizenship that the citizenship of the receiver is to be regarded."

Here it is manifest that if the Atlantic Company had brought suit in the federal court to recover upon the grounds stated in appellant's amended bill the jurisdiction of the federal court to entertain such suit must have exclusively depended upon diversity of citizenship by reason of the absence of all federal questions; and upon an appeal in that suit to the Court of Appeals its judgment would have been final. *Here*, if appellant's suit is *not* ancillary, it *must* for the same reason depend for federal jurisdiction upon diversity of citizenship.

In *Brisenden* v. *Chamberlain*, 53 Fed. Rep., 310, held:

> "Now, the jurisdiction of this court, when it is based on citizenship of the parties, depends upon the citizenship of the parties to the record, and not

of those whom they may represent. (*Bonnafee* v. *Williams*, 3 How., 574; Dill. Rem. of Causes, Sec. 101.) Where the jurisdiction of the United States courts depends upon the citizenship of the parties, it has reference to the parties as persons. A petition for removal must therefore state the personal citizenship of the parties, and not their official citizenship, if there can be such a thing." (*Amory* v. *Amory*, 95 U. S., 187.)

In *Davies* v. *Lathrop*, 12 Fed. Rep., 353 and 854, held:

> " A receiver is a representative as much as an executor, and his personal citizenship will be regarded on motion to remand." (See also Spear Fed. Jud., page 151.)

II.

AS TO JURISDICTION RESTING UPON FEDERAL QUESTIONS.

In *Press Publishing Company* v. *Monroe*, 164 U. S., 105, the court distinguishes the difference between jurisdictional grounds dependent upon diversity of citizenship and jurisdictional grounds dependent upon " the constitution and laws of the United States." In that case this court said:

> " Of suits of a civil nature, at law or in equity, the Circuit Courts of the United States have original jurisdiction, by reason of the citizenship of the parties, in cases between citizens of different states or between citizens of a state and aliens; and by reason of the cause of action, ' in cases arising under the constitution or laws of United States, or treaties made or which shall be made under their authority,' including, of course, suits arising under the patent or copyright laws of the United States."

This diversity of citizenship confers jurisdiction alone. It contributes nothing to the cause of action; while the

constitution or laws of the United States may contribute to the right of action as well as to furnish federal jurisdiction.

This court in that case further said:

> "The plaintiff, in her complaint, did not claim any right under the constitution and laws of the United States, or in any way mention or refer to that constitution or to those laws; and, at the trial, she relied wholly upon a right given by the common law, and maintained her action upon such a right only."

So here, appellant asserted *no* right under the constitution and laws of the United States, but sought to maintain his right to recover in equity dependent upon common law rights for action.

In *Ex parte Jones*, 164 U. S., 693, this court held:

> "But even if another ground were developed in the course of the proceedings, the judgment of the Court of Appeals would be final if the jurisdiction of the Circuit Court were originally invoked solely upon the ground of citizenship. *Colorado Central Mining Co.* v. *Turck*, 150 U. S., 138; *Borgmeyer* v. *Idler*, 159 U. S., 408."

In that case the Court of Appeals refused the prayer for an appeal, and this court was asked to issue a writ of mandamus compelling the Court of Appeals to grant the appeal, but the writ was denied.

III.

We anticipate counsel's contention, namely, that the mere order of a federal court appointing a chancery receiver upon a creditor's bill vests such receiver with authority to invoke federal jurisdiction in an independent and original suit without reference to the diversity of citizenship of the parties thereto, and notwithstanding no federal question is involved.

Observe that appellant in this suit, as receiver, is simply attempting to secure certain assets mentioned in the Pettit bills for the purpose of paying Pettit and other alleged creditors of the Atlantic Company. Therefore, appellant's bill is simply carrying forward the Pettit suits to recover alleged assets which Pettit might have recovered as a judgment creditor on a creditors' bill.

Ry. Co. v. *Ry. Co.*, 111 U. S., 523.

In defining a federal question arising under the constitution or laws of the United States, the court, in the Pacific Railway Removal cases, 115 U. S., page 12, said:

> "But it was objected that several questions of general law might arise in a case besides that which depended upon an act of Congress; the court first disposed of that objection, holding that, as scarcely any case occurs every part of which depends upon the constitution, laws or treaties of the United States, it is sufficient for the purposes of federal jurisdiction if the case *necessarily* involves a question depending on such constitution, laws or treaties."

It is manifest from this opinion, that the constitution in reciting the grounds for federal jurisdiction does not include (as a law of Congress, or as a law of the United States) an order of a court appointing a receiver. Before the order of appointment could be made, jurisdiction

upon one of the grounds stated in the constitution must affirmatively appear, and it is that jurisdiction and the ground upon which it attaches that gives to the order appointing a receiver its validity and judicial authority, and that jurisdiction of the original case in which the receiver was appointed is imputed to any ancillary suit brought by the receiver in the court appointing him, or in a court of co-ordinate jurisdiction.

The authority of a receiver of the federal court to sue may depend upon his order of appointment, but the validity of the order of appointment depends upon the jurisdiction of the court that enters it, and such jurisdiction to appoint such receiver in the Pettit suits depended exclusively upon the diverse citizenship of the parties thereto, and not upon the constitution or laws of the United States.

In *Smith* v. *Rockliffe*, *supra*, the receiver brought suit. Held:

> "The jurisdiction of the United States Court in the present case is not invoked upon the ground that the controversy presents a case arising under the constitution or laws of the United States, nor can jurisdiction be claimed upon the ground of the diverse citizenship of the parties, since, as we have seen, the State itself is a party. It must rest upon some other grant for jurisdiction. The only other grant under which it could be claimed is that which is contained in Sec. 2 of Art. 3 of the Constitution, declaring that the judicial power of the United States shall extend to controversies 'between a state and citizens of another state.' * * * The plaintiff in error must find in this provision his right to proceed in a federal court, and if the Atlantic and Pacific Railroad Company is not a citizen of a state, or a citizen or subject of a foreign state, the controversy is not among those of which jurisdiction is conferred upon the United States Court by the Constitution."

No federal question can arise on the *mere* order of the court appointing a receiver, which will vest appellate jurisdiction in this court under Circuit Court of Appeals Act, unless:

1. Some right of the receiver, created by the order appointing him, is abridged or taken away by a state court (which is not this case), and then *not* unless the receiver puts that question in issue; that is, the right so abridged must be asserted by the federal receiver in his pleadings. No such question is here involved or presented.

Sayward v. *Denny*, 158 U. S., 180, involved jurisdiction depending solely upon some right, title, privilege or immunity under the laws of the United States specially set up and denied by the state court. This court held that if the same was not so specially set up and denied, it could not be made available in this court for jurisdiction.

2. The liability of the defendants alleged in appellant's amended bill cannot be determined in any manner or degree by the order of appointment. That order neither creates any liability against the defendants, nor does it tend in any degree to establish the right of appellant to a money decree, nor to any of the alternative remedies prayed in his amended bill. So that while the order of appointment gives him the right and authority to sue for and on behalf of the Atlantic Company, he must establish the liability of the defendants under general law, and such liability is neither created nor arises under the constitution or laws of the United States.

Press Pub. v. *Monroe*, 164 U. S., *supra*.

Respectfully submitted.

By HENRY W. BLODGETT,
G. W. KRETZINGER,
E. C. FIELD,
For Appellee

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

CHARLES E. POPE, Receiver of the Chicago & South Atlantic Railroad Company,

Appellant,

vs.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY,

Appellee.

NOTICE.

To JOHN S. MILLER,
Solicitor for Appellant.

Please take notice that on Monday the 30th day of January 1899, at the Capital City of Washington, D. C., upon the opening of the Supreme Court of the United States upon said day, or as soon thereafter as counsel can be heard, we shall move that the appeal in the above cause be dismissed, and in support of said motion we shall present to the Court and file a short transcript of the record and a brief, copies of which are herewith served upon you, when and where you may be present, if you see fit.

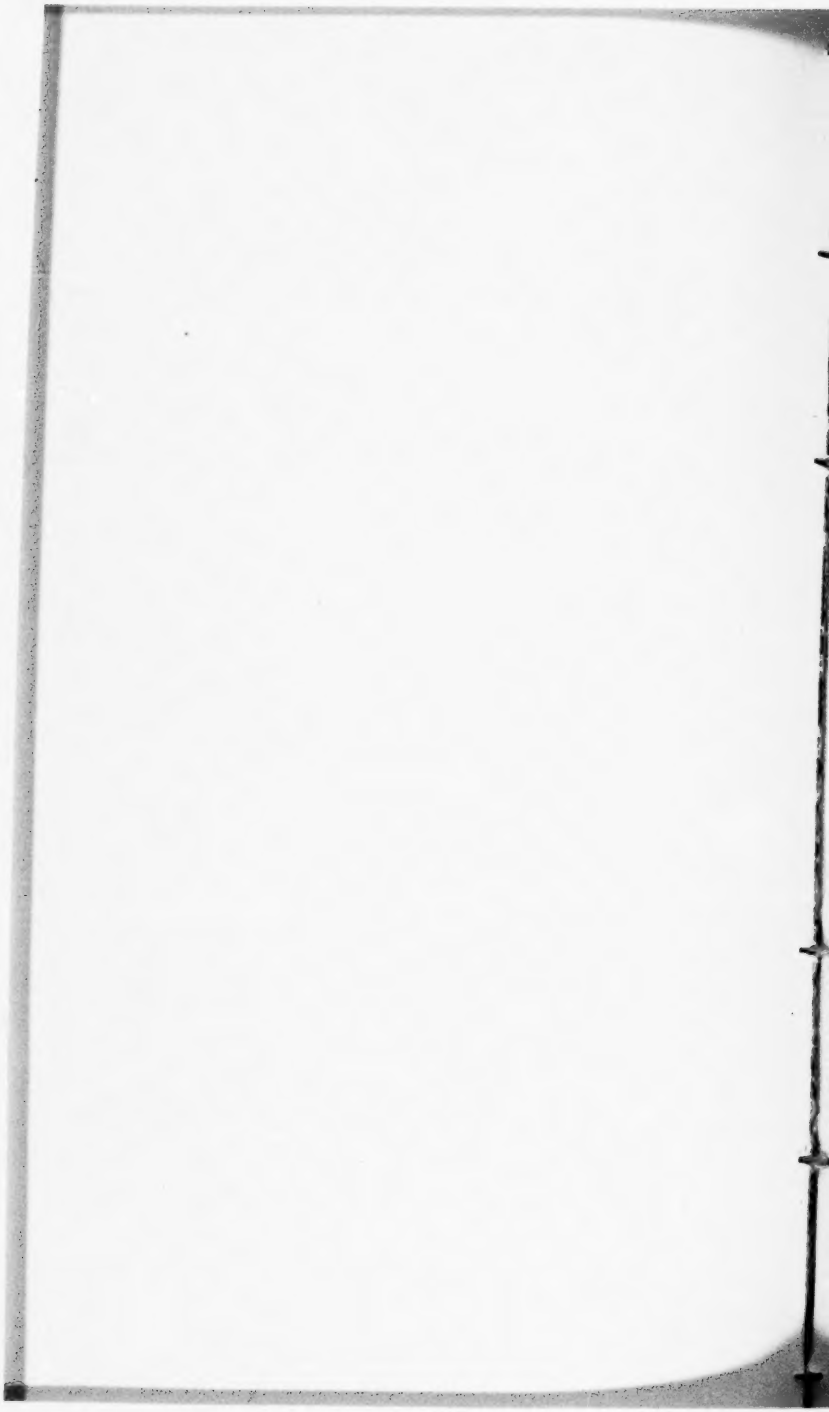
HENRY W. BLODGETT,
G. W. KRETZINGER,
E. C. FIELD,

For Appellee.

Service of the above notice, together with copies of brief and short ~~abstract~~ transcript record of ~~transcript~~ mentioned in said notice, is accepted this ..... day of January, 1899, at Chicago, Illinois.

.....

For Appellant.



Office Supreme Court U.S.
FILED
FEB 18 1899
JAMES H. McKENNEY,
Clerk

No. 303.

Reply Brf. of Blodgett, Kretzinger & Field for Appellee

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1898.

Filed Feb. 18 1899.

No. 303.

CHARLES E. POPE, RECEIVER,

Appellant,

vs.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY,

Appellee.

Appeal from the Circuit Court of Appeals for the Seventh Circuit.

Reply to Appellant's Brief Against Appellee's Motion to Dismiss Appeal.

HENRY W. BLODGETT,
G. W. KRETZINGER,
E. C. FIELD,

FOR APPELLEE.

BARNARD & MILLER PRINT, CHICAGO.

Note: We suggested in a note at the foot of our motion to dismiss this appeal that the record covers over three thousand printed pages, and therefore disposition of this motion before hearing would save much expense, labor of counsel and of this court. In addition we respectfully submit that if this court is without jurisdiction appellee ought not to be put to the expense of preparation for hearing on the merits when the same cannot be determined by this court.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

CHARLES E. POPE, RECEIVER, *Appellant,* *vs.* LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, *Appellee.*	Appeal from the Circuit Court of Appeals, Seventh Circuit.

Reply to Appellant's Brief Against Appellee's Motion to Dismiss Appeal.

Here, the Pettit suits, as shown in former brief, in which appellant was appointed receiver, depended exclusively for federal jurisdiction upon diversity of citizenship, and that this suit brought by appellant as such receiver was ancillary to such original suits.

Counsel for appellant broadly asserts against our motion to dismiss this appeal that the orders appointing appellant receiver in the two Pettit suits, created him a federal officer under United States law, that such orders by their mere entry became equivalent to the laws of the United States within the meaning of the constitution. The soundness of this contention was denied by this court in *Provident Saving Society* v. *Ford*, 114 U. S., page 641. In that case suit was brought in the state court on a judgment rendered in the federal court, and a

removal to the federal court was attempted upon the ground that the judgment, the basis of the suit, was equivalent to an act of Congress, and therefore presented a federal question depending upon the laws of the United States for determination. But this court said:

> "It is suggested, however, that a suit on a judgment recovered in a United States court is necessarily a suit arising under the laws of the United States, as much so as if the plaintiff or defendant were a corporation of the United States; and hence that such a suit is removable under the act of March 3, 1875. * * *
>
> "What is a judgment but a security of record showing a debt due from one person to another? * * * It is simply the case of an ordinary right of property sought to be enforced. A suit on a judgment is nothing more, unless some question is raised in the case (as might be raised in any of the cases specified), distinctly involving the laws of the United States—such a question, for example, as was ineffectually attempted to be raised by the defendant in this case. If such a question were raised, then it is conceded it would be a case arising under the laws of the United States.
>
> "These considerations show a wide distinction, as it seems to us, between the case of a suit merely on a judgment of a United States court, and that of a suit by or against a United States corporation."

Thereupon this court held in that case that suit upon a federal judgment presented no federal question, unless the enforcement of the judgment, or its validity, depended upon an act of Congress or some provision of the federal constitution. This decision has not been modified by any case cited or quoted by counsel, and we submit, it is conclusive of this question in favor of our motion.

If a final judgment of a federal court, as held in that case, does not constitute a federal law—is not equivalent

to an act of Congress within the meaning of the constitution, how can a mere *interlocutory order* appointing a receiver be held equivalent to a constitutional provision or an act of Congress?

Courts do not make laws. They expound—construe them.

This interlocutory order might be vacated and set aside at any time by the court entering it, and upon the motion of the court itself.

Appellant was not appointed receiver under any federal statute. He was *not* appointed receiver of a federal corporation. He is a mere chancery receiver of an Illinois corporation, appointed by a federal equity court in the exercise of its general chancery powers derived, *not* from any act of Congress, but from the powers exercised by English chancery courts.

Counsel cite and rely with apparent confidence upon *Cook* v. *Avery*, 147 U. S., 380. In that case Avery alleged that both he and defendant Cook deraigned title through one Payne; that Payne conveyed to the defendant by deed in 1886, while the plaintiff, Avery, claimed title under execution and sale upon a judgment recovered against Payne four years before Cook obtained his deed. The plaintiff further alleged that by reason of certain laws of the United States, and rules of the Circuit Court of the United States (specifically referring to them), the judgment was a lien upon the real estate from the date of its rendition and continued to be a lien up to the date of the sale by the marshal, and by reason whereof the plaintiff had a superior title. The defendant denied that the judgment was ever a valid lien upon the land under the laws of the United States and rules of the Circuit

Court, "and this constituted the controlling question in the case, and upon which the plaintiff's title depended."

The court, after reviewing the statutes of both the state and the United States on the subject, and the rules of the United States Court, concludes as follows:

> "The plaintiff is to be regarded as the purchaser at the sale, and the validity of his purchase turns upon the existence of a lien, which he asserted and the defendants denied. The disposition of this issue *depended upon the laws of the United States* and the *rules of the Circuit Court*, and their construction and application were directly involved. We are of the opinion that jurisdiction as resting upon the subject-matter was properly invoked."

Here, no federal law and no question involving the effect of a federal judgment depending for its lien upon a construction of an act of Congress are involved.

II.

Counsel assert that appellant as such receiver derived his title through his order of appointment and through the assignment made by the South Atlantic Company, an Illinois corporation, pursuant to such order. But appellant did not aver that his cause of action originated or depended upon his order of appointment or these assignments. On the contrary, he stepped into the shoes of the South Atlantic as its receiver and asserted the right to recover in its name and stead as its receiver, by virtue of certain transactions between it—an Illinois corporation, and the Delphi company,—an Indiana corporation.

In *Provident Sav. Society* v. *Ford*, *supra*, this court said:

> "If A brings an action against B, trover or otherwise, for the withholding of such securities," (United States bonds) "it is not therefore a cause arising under the laws of the United States, although the whole value of the securities depends upon the fact of their being the obligations of the United States. So if A have title to land by patent of the United States and brings an action against B for trespass or waste, * * * it is not therefore a case arising under the laws of the United States. It is simply the case of an ordinary right of property sought to be enforced."

Appellant averred in his amended bill:

"The Chicago & South Atlantic Railroad Company continued the work of constructing said railroad so agreed to be built, in good faith, and while so engaged * * * some real or pretended stockholders of said Indianapolis, Delphi & Chicago Railroad Company entered into a scheme whereby, conniving together, and fraudulently and falsely pretending that said Chicago & South Atlantic Railroad Company had ceased doing work on said road so agreed to be built, and had abandoned the same, and had thereby forfeited its rights under said agreements, and declared the same null and void, and under said fraudulent scheme, and false and fraudulent pretense and claim *seized* upon and *took* possession of a part of said road." (Short record, page 12.)

And prayed for relief, among other things:

"Your orator prays that whichever of said defendants" (Indiana and Illinois corporations) "may be found to have taken possession of and to be in possession of said railroad and the effects and property of said Chicago & South Atlantic Railroad Company" (an Illinois corporation) "so unlawfully and

fraudulently seized and occupied as aforesaid, may be decreed to be a trustee for said last named company and for your orator as receiver thereof, and that the title thereof be decreed to be in said last named company and for your orator as such receiver." (Short record, page 21.)

Appellant thus alleges dispossession of an Illinois corporation, the Chicago & South Atlantic, by other state corporations, and prays that the defendants now holding possession may answer for the same to the Chicago & South Atlantic Company or to appellant as its receiver and in its place and stead.

Now, under this averment, is it possible that a mere interlocutory order appointing a receiver presents a federal question—becomes in effect a law of the United States within the meaning of the Constitution in a degree sufficient to furnish federal jurisdiction in a suit brought by such receiver to dispossess defendants of property which neither originated under a federal law, and is neither held or claimed by a federal corporation. Yet, as held in the case last cited, the assertion of rights against a trespasser of land held under a United States patent presents no federal question—does not involve a law of the United States within the meaning of the Constitution.

III.

But appellant was not denied any right claimed by him by virtue of his orders of appointment or his deeds of assignment. On the contrary, the decree of the Circuit Court and the decision of the Circuit Court of Appeals dealt solely and alone with the alleged rights of the Illinois South Atlantic Company against Indiana corporations.

Counsel recite at page 8, from the amendments to appellant's amended bill filed by leave of court, after the entry of the final decree by the Circuit Court. In that amendment appellant avers:

"And the said *defendants*, or some of them, sometimes pretend that this court, in the said suit of John B. Pettit never had any jurisdiction of the subject-matter of said controversy, or of the person of the said Chicago & South Atlantic Railroad Company, to appoint your orator as receiver as aforesaid," and contends that a federal question is presented by this averment.

We submit that the averment is of something that "the defendants, or some of them, sometimes pretend," etc., which was expressly condemned by this court in *Tenn.* v. *Bank*, 152 U. S., 454, where it was averred that "complainants further stated that the defendants claimed," etc., that the revenue law of the state was void, because in violation of the clause of the constitution which forbids the state to pass any laws impairing the obligation of contracts. This court held:

> "The only reference to the constitution or laws of the United States is the suggestion that the *defendants* will contend that the law of the State, under which the complainants claim is void, because in contravention of the constitution of the United States; and by the settled law of this court a *suggestion* of one party that the other will or may set up a claim under the constitution or laws of the United States, does not make the suit one arising under the constitution or those laws."

IV.

Counsel assert under Point III, page 12, that appellant, as receiver, "is an officer of the Federal Court appointing him," and cite cases:

(*a.*) Defining the office and character of receivers of national banks under the banking act.

(*b.*) Receivers of federal railroad companies.

(*c.*) Cases against marshals of the United States, etc., and insist that such cases control the legal status of appellant, and make him a federal officer under United States laws within the meaning of the constitution.

Counsel rely with apparent confidence upon *Tex. & Pac. v. Cox*, 145 U. S., 593, as a decision supporting their assumption of law that the mere order of court appointing appellant receiver, created him an officer of the United States, under its constitution and laws. They say and quote (Appellant's Brief, page 13):

> "The orders appointing plaintiff receiver and authorizing him to bring this suit, 'were entered and all action of the court in the premises taken by virtue of judicial power possessed and exercised under the constitution and laws of the United States.'"

In that case the suit was brought by an injured party against the receiver of the Texas & Pacific Railway Compsna, and it appeared that the plaintiff aud one of the defendants were both residents of the State of Texas, where the suit was brought. The jurisdiction was challenged by the receiver on the ground that there was no diversity of citizenship, but the court disposed of the question, as follows:

> "The Texas & Pacific Railway Company is a cor-

poration deriving its corporate powers from acts of Congress, and was held in Pacific Railway removal cases, 115 U. S., 1, to be entitled, under the act of March 3, 1875, to have suits brought against it in the state courts removed to the Circuits Courts of the United States on the ground that they were suits arising under the laws of the United States. The reasoning was that this must be so since the company derived its powers, functions and duties from those acts, and suits against it necesssarily involved the exercise of those powers, functions and duties as an original ingredient."

That case, therefore, stands on the same footing as the other cases cited by counsel, where receivers of national banks were appointed under the national banking act, and where it is said by this court, "receivers of national banks, as plaintiffs, have always been held to be officers of the United States suing under authority of act of Congress."

Observe in that case the receiver had actual possession of the road, and was operating it under the orders of the court. The powers he exercised in such operation were derived from the act of Congress which constituted the charter of the Texas & Pacific. The order of the court appointing him simply authorized him to exercise those powers in the operation of the road. Thus he stepped into the shoes of a federal corporation. Here appellant never came into possession of the property described in his amended bill. The same was at all times in the actual possession and control of the defendants, Illinois and Indiana corporations, to which they asserted title of record. (See opinion Court of Appeals, short Rec., 87.) So none of the property in controversy ever passed within the jurisdiction of the court through the possession of the receiver. All appellant, as receiver, possessed was the

contracts mentioned in his amended bill of complaint, and through which (not upon his orders of appointment) he asserted the right to recover on behalf of the South Atlantic Company, an Illinois corporation, for an alleged seizure and taking from its possession, etc.

That case, or any of the class of cases cited by counsel for appellant, gives no support whatever to the proposition that a mere order appointing a receiver on a creditor's bill makes him a federal officer acting under the constitution and laws of the United States.

Gibson v. *Peters*, 150 U. S., 342, was brought to this court on error to the Circuit Court of the Eastern District of Virginia. The suit was brought by the United States District attorney against the receiver of a national bank to recover for legal services. In its opinion this court referred to Sec. 380 of the Revised Statutes of the United States, providing that all suits and proceedings arising out of the provisions of law governing national banking associations, in which the United States or any of its officers or agents are parties shall be conducted by the district attorneys of the several districts under the direction and supervision of the solicitor of the treasury. This court held:

> "The suit brought against McDonald was one arising out of the provisions of an act of Congress governing such associations, and the receiver in whose name it was instituted was an officer and agent of the United States within the meaning of the above section."

In *Brown* v. *Smith*, 88 Fed. Rep., 565, the receiver of a national bank brought suit to recover an assessment upon the shares therein held by the defendant. Held:

> "Sec. 629 of the revised Statutes, concerning the jurisdiction of the Circuit Courts, was divided

into twenty paragraphs, the subjects of but few of which were carried into the act of 1875, to determine the jurisdiction of the Circuit Courts and regulate the removal of causes from state courts. Among the subjects left were suits by officers of the United States suing under authority of any act of Congress, and suits by or against national banking associations. Receivers of national banks, as plaintiffs, had always been held to be officers of the United States suing under authority of acts of Congress."

Here the act of Congress in express terms makes the receiver of a national bank a federal officer, and authorizes him as such to sue for and on behalf of the national bank in his own name.

Kennedy v. *Gibson*, 8 Wall., 503.

Thus, the appointment of receivers of national banks — federal corporations — is expressly provided for in the very act of Congress creating such banks. This act in express terms vests in such receiver the title to all of the property held by the insolvent bank, and his duties in winding up the affairs of the federal insolvent are specifically detailed, and he is made responsible and subject to the supervision of the Comptroller of the Currency.

Here, appellant was appointed a mere chancery receiver by an interlocutory order by a federal equity court in the exercise of its general equity power, and in the absence of any congressional legislation authorizing the same. If such an interlocutory order constitutes the chancery receiver appointed thereby a federal officer — a creature of the United States laws, and clothes him with the equivalent character and functions of a national bank receiver — it can only be upon the sole ground that such an interlocutory order is equivalent to an act of Congress, the national banking act.

Feibleman v. *Packard*, 109 U. S., cited by counsel, is expressly shown to have arisen under an act of Congress. There the suit was brought in the state court against a United States marshal and the sureties on his bond. A petition was filed by the defendants for the removal of the cause, which was refused by the state court. They thereupon filed their petition in the United States Court for a writ of *certiorari* to remove the cause to that court, which was granted. Final judgment was had for the defendants, and the cause was taken to the Supreme Court of the United States on writ of error. The court says:

> "The action, as we have seen, was founded on the official bond of the marshal. The bond was required to be given by Sec. 783, Rev. Stat., and Sec. 784 expressly gives the right of action." The suit "was plainly upon the bond itself, and therefore arose directly under the provisions of an act of Congress."

It is clear that all the cases cited by counsel involving national bank receivers, receivers of corporations created under federal law, and marshals of the United States, have no application *whatever*.

V.

Counsel cite cases brought to this court on error from state courts of final review. No provision was made in the act of Congress for the review of this class of cases by the Circuit Court of Appeals. On the contrary, the Circuit Court of Appeals Act, (last clause of Sec. 5) provides that "nothing in this act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a state, nor the construction of the statute providing for a review of such cases."

In *McNulta* v. *Lochridge*, 141 U. S., page 331, it is evident from the opinion of this court that it would have dismissed the writ of error in the absence of Rev. Stat., Sec., 709, which was left unaffected by the Circuit Court of Appeals Act. This court said:

> "But while we think that plaintiff in error is not entitled to immunity by virtue of the statute of 1887, we are authorized by the Rev. Stat., Sec. 709, to review the final judgment or decree of a state court where 'any right, title, privilege or immunity is claimed under any authority exercised under the United States, and the decision is against such title, specially set up or claimed by either party under such authority," etc.
>
> "Now, as McNulta was exercising an authority as receiver under an order of the Federal Court, and claimed immunity as such receiver from suit without the previous leave of such court, and the decision was adverse to such claim, he is entitled to a review of such ruling, whether his claim be founded upon the statute or upon principles of general jurisprudence."

Therefore, it conclusively follows from this holding:

(*a.*) That jurisdiction in that case was taken by this court under Sec. 709, and not by appeal under the Circuit Court of Appeals Act.

(*b.*) That the jurisdiction of this court to review that case, depended exclusively upon McNulta claiming that he was denied an immunity by the state court, *namely*, relief from a suit brought against him as receiver for the liability of his predecessor without leave of court.

Here, appellant was not sued, but brought suit; he was not denied the right to bring and prosecute the suit, but was authorized so to do by the Federal Court appointing him. The order appointing him vested no title in

him, but simply authorized him to recover anything that rightfully belonged to the South Atlantic, an Illinois corporation, for whom he was appointed receiver, for the benefit of the creditors in the Pettit suits.

We respectfully submit the motion in our former brief and this reply.

HENRY W. BLODGETT,
G. W. KRETZINGER,
E. C. FIELD,
For Appellee.

POPE *v.* LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 303. Submitted January 30, 1899. — Decided April 3, 1899.

When the jurisdiction of a Circuit Court of the United States depends on diverse citizenship, its decree is made final by the act of March 3, 1891, c. 517, 26 Stat. 826.

When an action or suit is commenced by a receiver, appointed by a Circuit Court, to accomplish the ends sought and directed by the suit in which the appointment was made, such action or suit is regarded as ancillary, so far as the jurisdiction of the Circuit Court, as a court of the United States, is concerned; and where the jurisdiction of the main suit is predicated on diversity of citizenship, and the decree therein in the Circuit Court of Appeals therefore becomes final, the judgment and decrees in the ancillary litigation are also final.

The suits in which this receiver was appointed were in the nature of creditors' bills, and the only ground of Federal jurisdiction set up in them was diversity of citizenship; and as, if the decrees therein had been passed upon by the Circuit Court of Appeals, its decision would have been final, the same finality attaches to the decree of the Circuit Court of Appeals in this suit.

BALL and Pettit filed their bill in the Circuit Court of the United States for the Northern District of Illinois alleging that Ball was a citizen of Indiana and that Pettit was a citizen of Wisconsin, and that defendants were citizens of Indiana and Illinois, which suit was discontinued as to Ball, leaving Pettit, a citizen of Wisconsin, the sole complainant. Pope was appointed, in substitution for one Fish, receiver of the

Chicago and South Atlantic Railroad Company of Illinois, the order containing, among other things, the following:

"And it is further ordered that the defendant, the said Chicago and South Atlantic Railroad Company, or whoever may have possession thereof, do assign, transfer and deliver over to such receiver under the direction of Henry W. Bishop, a master in chancery of this court, all the property, real and personal, wheresoever found in this district, and all contracts for the purchase of land, and all other equitable interests, things in action, and other effects which belonged to, or were held in trust for, said defendant railroad company, or in which it had any beneficial interest, including the stock books of said railroad company, in the same condition they were at the time of exhibiting the said bill of complaint in this cause, except as far as necessarily changed in the proper management of said road, or in which it now has any such interest, and that said defendant, Chicago and South Atlantic Railroad Company, deliver over, in like manner all books, vouchers, bills, notes, contracts and other evidences relating thereto, and also the stock books of said railroad company.

"And it is further ordered that the said receiver have full power and authority to inquire after, receive and take possession of all such property, debts, equitable interests, things in action, and other effects, and for that purpose to examine said defendant, its officers and such other persons as he may deem necessary on oath before said master from time to time."

Afterwards a further order was entered, *nunc pro tunc*, as follows:

"And now comes the receiver, Charles E. Pope, of said Chicago and South Atlantic Railroad Company, and on his application it is ordered and directed that said receiver have full power and authority to bring and prosecute any and all necessary suits for the collection of any claims, choses in action and enforcement of any and every kind and nature, and to defend all suits and actions touching the rights or interests of the property or effects of any kind in his possession or under his control as receiver. This order to be entered now as of the date of his appointment and qualification as receiver."

Statement of the Case.

Soon after, Pettit filed his bill in the Circuit Court of the United States for the district of Indiana, averring that he was a citizen of the State of Wisconsin, against "the said Chicago and South Atlantic Railroad Company, a corporation organized under the laws of the State of Indiana and State of Illinois, by the consolidation of an Illinois corporation of the same name of defendant herein, and an Indiana corporation known as 'the Chicago and South Atlantic Railroad Company of Indiana.'" Pope was appointed receiver on that bill, the order being similar in its terms to that entered in the Circuit Court for the Northern District of Illinois. After such appointment, and on July 12, 1881, Pope, as receiver, filed his bill of complaint in the Circuit Court for the District of Indiana, seeking to recover certain property and property rights held and claimed by certain of the defendants, which appellant claimed belonged to the Chicago and South Atlantic Railroad Company and to the ownership of or right to which he had succeeded as such receiver.

The amended bill on which the cause was heard stated that "Your orator, Charles E. Pope, who is receiver of the Chicago and South Atlantic Railroad Company, and who is a citizen of the State of Illinois, brings this his amended bill of complaint — leave therefor having been granted by this honorable court — against" certain companies and individuals, severally citizens of the States of Indiana, Ohio, New York and Kentucky; that he was appointed receiver of the Atlantic Company by the Circuit Court of the United States for the Northern District of Illinois, and also receiver by the Circuit Court of Indiana; and that he was authorized by the express orders of both courts, appointing him receiver, "to bring all suits necessary and proper to be brought to recover possession of said estate and effects and to enforce all claims," etc.

The cause went to hearing, and a money decree was rendered by the Circuit Court in favor of Pope, receiver, against appellee, which appellee was adjudged by that decree to pay. An appeal having been prosecuted to the Circuit Court of Appeals for the Seventh Circuit, a motion was made to dismiss the appeal for want of jurisdiction, and the motion over-

ruled. On final hearing the decree of the Circuit Court was reversed by the Circuit Court of Appeals, with instructions to dismiss the amended bill. The opinion of the Circuit Court of Appeals was filed June 12, 1897. 53 U. S. App. 332. Thereafter a petition for a rehearing was filed and denied. Subsequently Pope, receiver, applied to this court for a writ of certiorari, which application was denied March 7, 1898. 169 U. S. 737. On March 23 Pope moved the Circuit Court of Appeals for leave to file a second petition for rehearing, and the motion was overruled. Pope then applied to the Circuit Court of Appeals for an appeal to this court, which was granted, and the appeal having been docketed, this motion to dismiss was made and duly submitted.

Mr. Henry W. Blodgett, *Mr. G. W. Kretzinger* and *Mr. E. C. Field* for the motion.

Mr. John S. Miller opposing.

Mr. Chief Justice Fuller delivered the opinion of the court.

If the decree of the Circuit Court of Appeals was made final by the act of March 3, 1891, c. 517, 26 Stat. 826, this appeal must be dismissed; and it was so made final if the jurisdiction of the Circuit Court depended entirely on diverse citizenship.

The Circuit Courts of the United States have original jurisdiction of suits of a civil nature, at law or in equity, by reason of the citizenship of the parties, in cases between citizens of different States, or between citizens of a State and aliens; and, by reason of the cause of action, "in cases arising under the Constitution or laws of the United States, or treaties made or which shall be made under their authority," as for instance suits arising under the patent or copyright laws of the United States. *Press Publishing Company* v. *Monroe*, 164 U. S. 105.

Diversity of citizenship confers jurisdiction, irrespective of the cause of action. But if the cause of action arises under

the Constitution, or laws, or treaties, of the United States, then the jurisdiction of the Circuit Court may be maintained irrespective of citizenship.

The Circuit Court undoubtedly had jurisdiction of this suit on the ground of diversity of citizenship, not only because that fact existed in respect of complainant and defendants, but because the suit was ancillary to those in which the receiver was appointed. When an action or suit is commenced by a receiver, appointed by a Circuit Court, to accomplish the ends sought and directed by the suit in which the appointment was made, such action or suit is regarded as ancillary so far as the jurisdiction of the Circuit Court as a court of the United States is concerned; and we have repeatedly held that jurisdiction of these subordinate actions or suits is to be attributed to the jurisdiction on which the main suit rested; and hence that where jurisdiction of the main suit is predicated on diversity of citizenship, and the decree therein is, therefore, made final in the Circuit Court of Appeals, the judgments and decrees in the ancillary litigation are also final. *Rouse* v. *Letcher*, 156 U. S. 47; *Gregory* v. *Van Ee*, 160 U. S. 643; *Carey* v. *Houston & Texas Railway Co.*, 161 U. S. 115. It is true that *Rouse* v. *Letcher* and *Gregory* v. *Van Ee* were proceedings on intervention, but *Carey* v. *Houston & Texas Railway Co.* arose on an original bill in the nature of a bill of review. In that case we took occasion to quote from the opinion of Mr. Justice Miller in *Minnesota Company* v. *St. Paul Company*, 2 Wall. 609, in which the distinction is pointed out between supplemental and ancillary, and independent and original, proceedings, in the sense of the rules of equity pleading, and such proceedings "in the sense which this court has sanctioned with reference to the line which divides the jurisdiction of the Federal courts from that of the state courts." *Krippendorf* v. *Hyde*, 110 U. S. 276; *Pacific Railroad* v. *Missouri Pacific Railway*, 111 U. S. 505, and other cases were cited; the bill held to be ancillary to the suit the decree in which was attacked; and the rule laid down in *Rouse* v. *Letcher* and *Gregory* v. *Van Ee* applied.

The suits in which this receiver was appointed were in the

nature of creditors' bills alleging an indebtedness due from the Atlantic Company; the insolvency of that company; that certain corporations had in their possession assets of the Atlantic Company; and praying for the appointment of a receiver; the marshalling of assets; the winding up of the Atlantic Company, and the application of its assets to the payment of its debts. The only ground of Federal jurisdiction set up in the bills was diversity of citizenship, and if the decrees therein had been passed on by the Circuit Court of Appeals, the decision of that court would have been final under the statute. And as this suit was in effect merely in collection of alleged assets of the Atlantic Company, it must be regarded as auxiliary, and the same finality attaches to the decree of the Circuit Court of Appeals, therein.

And this is true although another ground of jurisdiction might be developed in the course of the proceedings, as it must appear at the outset that the suit is one of that character of which the Circuit Court could properly take cognizance at the time its jurisdiction is invoked. *Colorado Central Mining Co.* v. *Turck*, 150 U. S. 138; *In re Jones*, 164 U. S. 691, 693; *Third St. & Suburban Railway Co.* v. *Lewis*, *ante*, 456.

Some further observations may be usefully added, although what has been said necessarily disposes of the motion.

The receiver based his right of recovery on the alleged seizure by one of the defendant companies of certain rights of way, and grading done thereon by the Atlantic Company under two specified contracts, which seizure and appropriation were alleged to have been fraudulently and forcibly made; and it was averred that appellee, the Louisville, New Albany and Chicago Railroad Company, acquired title thereto and possession thereof through its consolidation with another of the defendant companies, which had acquired its title and possession through the foreclosure of a mortgage given by the company which had made the seizure. The bill nowhere asserted a right under the Constitution or laws of the United States, but proceeded on common law rights of action. We cannot accept the suggestion that the mere order of a Federal

court, sitting in chancery, appointing a receiver on a creditor's bill, not only enables the receiver to invoke Federal jurisdiction, but to do this independently of the ground of jurisdiction of the suit in which the order was entered, and thereby affect the finality of decrees in the Circuit Court of Appeals in proceedings taken by him. The validity of the order of appointment of the receiver in this instance depended on the jurisdiction of the court that entered it, and that jurisdiction, as we have seen, depended exclusively upon the diverse citizenship of the parties to the suits in which the appointment was made.

The order, as such, created no liability against defendants, nor did it tend in any degree to establish the receiver's right to a money decree, nor to any other remedy prayed for in the amended bill. The liability of defendants arose under general law, and was neither created nor arose under the Constitution or laws of the United States.

In *Bausman* v. *Dixon*, 173 U. S. 113, we have ruled that a judgment against a receiver appointed by a Circuit Court of the United States, rendered in due course in a state court, does not *per se* involve the denial of the validity of an authority exercised under the United States, or of a right or immunity specially set up and claimed under a statute of the United States. That was an action to recover damages for injuries sustained by reason of the receiver's negligence in operating a railroad company of the State of Washington, though the receiver was the officer of the Circuit Court, and we said: "It is true that the receiver was an officer of the Circuit Court, but the validity of his authority as such was not drawn in question, and there was no suggestion in the pleadings, or during the trial, or, so far as appears, in the state Supreme Court, that any right the receiver possessed as receiver was contested, although on the merits the employment of plaintiff was denied, and defendant contended that plaintiff had assumed the risk which resulted in the injury, and had also been guilty of contributory negligence. The mere order of the Circuit Court appointing a receiver did not create a Federal question under section 709 of the Revised Statutes, and the receiver did not set up any right derived

from that order, which he asserted was abridged or taken away by the decision of the state court. The liability to Dixon depended on principles of general law applicable to the facts, and not in any way on the terms of the order." That was indeed a writ of error to a state court, but the reasoning is applicable here. Pope was appointed receiver by an interlocutory order of the Circuit Court in the exercise of its general equity powers. He did not occupy the position of a receiver of a corporation created under Federal law as in *Texas and Pacific Railway* v. *Cox*, 145 U. S. 593; or of a marshal of the United States as in *Feibelman* v. *Packard*, 109 U. S. 421; or of a receiver of a national bank as in *Kennedy* v. *Gibson*, 8 Wall. 498. Nor did his cause of action originate or depend on the order of appointment, or assignments made to him by the Atlantic Company pursuant to that order. Nor was any right claimed by him by virtue of his order of appointment or of his deeds of assignment denied or alleged to have been denied. The decrees of the Circuit Court and of the Circuit Court of Appeals dealt solely with the alleged rights of the Atlantic Company as against certain Indiana corporations. It is impossible to hold that these orders of appointment were equivalent to laws of the United States within the meaning of the Constitution.

We agree with counsel for appellee that *Provident Savings Society* v. *Ford*, 114 U. S. 635, 641, is in point in this aspect of the case. There it was ruled that "the fact that a judgment was recovered in a court of the United States does not, in a suit upon that judgment, raise a question under the laws of the United States within the meaning of the act of March 3, 1875." That was a writ of error to the Supreme Court of the State of New York to review a judgment of that court denying a motion for the removal of the cause to the United States Circuit Court. Mr. Justice Bradley delivered the opinion, and, after pointing out that the alleged grounds of removal were insufficient, remarked: "It is suggested, however, that a suit on a judgment recovered in a United States court is necessarily a suit arising under the laws of the United States, as much so as if the plaintiff or defendant were a cor-

poration of the United States; and hence that such a suit is removable under the act of March 3, 1875. It is observable that the removal of the cause was not claimed on any such broad ground as this; but, so far as the character of the case was concerned, only on the ground that the defendant had a defence under Rev. Stat. § 739, specifying what the defence was; and we have already shown that that ground of removal, as stated in the petition, was insufficient. But conceding that the defendant is now entitled to take its position on the broader ground referred to, is it tenable and sufficient for the purpose? What is a judgment, but a security of record showing a debt due from one person to another? It is as much a mere security as a Treasury note, or a bond of the United States. If A brings an action against B, trover or otherwise, for the withholding of such securities, it is not therefore a case arising under the laws of the United States, although the whole value of the securities depends upon the fact of their being the obligations of the United States. So if A have title to land by patent of the United States and brings an action against B for trespass or waste, committed by cutting timber, or by mining and carrying away precious ores, or the like, it is not therefore a case arising under the laws of the United States. It is simply the case of an ordinary right of property sought to be enforced. A suit on a judgment is nothing more, unless some question is raised in the case (as might be raised in any of the cases specified), distinctly involving the laws of the United States — such a question, for example, as was ineffectually attempted to be raised by the defendant in this case. If such a question were raised then it is conceded it would be a case arising under the laws of the United States. . . . Without pursuing the subject further, we conclude with expressing our opinion that this last ground of removal, like those already considered, was insufficient."

In *Cooke* v. *Avery*, 147 U. S. 375, jurisdiction was sustained on the ground that the plaintiff's title was derived through the enforcement of a lien, the validity of which depended on the laws of the United States and the rules of the Circuit

Court, and their construction and application were directly involved.

Appeal dismissed.

MR. JUSTICE BROWN took no part in the consideration and disposition of this motion.